SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 514

THE UNITED STATES OF AMERICA, PETITIONER

vs.

JAMES P. MITCHELL

No. 515

THE UNITED STATES OF AMERICA, PETITIONER

vs.

JAMES P. MITCHELL

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

1-3 In the District Court of the United States
for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JAMES P. MITCHELL, DEFENDANT

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

In the District Court of the United States
for the District of Columbia

Holding a Criminal Term—October Term, A. D. 1942

G. J. No. Orig., Criminal No. 70905, Housebreaking and Larceny

Indictment

Filed November 23, 1942

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one James P. Mitchell, on, to wit, the eleventh day of August 1942, and at the District of Columbia aforesaid, the dwelling of one Harry G. Meem, there situate, feloniously did enter, with intent to commit therein the crime of larceny, to wit, with intent the goods, chattels, and property in the said dwelling then and there being, feloniously to steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

4 And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one James P. Mitchell, on, to wit, the eleventh day of August 1942, and at the District of Columbia aforesaid, one jar, of the value of one dollar, two collar buttons, each of the value of one dollar, ten studs, each of the value of fifty cents, one pistol, of the value of five dollars, one razor, of the value of one dollar, two packages of toothpaste, each of the value of ten cents, two tubes of shaving cream, each of the value of ten cents, and one

quart of wine, of the value of two dollars, of the goods, chattels, and property of one Harry G. Meem; one pair of lorgnettes, of the value of three dollars, one finger ring, of the value of ten dollars, one pencil, of the value of three dollars, one teapot, of the value of five dollars, one pair of opera glasses, of the value of five dollars, one bell, of the value of one dollar, one suitcase, of the value of one dollar, and one collarette, of the value of five dollars, of the goods, chattels, and property of one Louise H. Meem, then and there being found in the dwelling referred to in the first count of this indictment feloniously did steal, take, and carry away; against the form of the statute in each case made and provided, and against the peace and government of the said United States.

EDWARD M. CURRAN,
Attorney of the United States in and for the District of Columbia.

A true bill:
HARRY W. BOSS, *Foreman.*

Filed in open court, Nov. 23, 1942, Charles E. Stewart, Clerk.

In District Court of the United States for the District of Columbia

The Court resumes its session pursuant to adjournment. Mr. Justice Laws, Presiding.

* * * * *

5 Nos. 70904, 70905, 70906, 70907—Indicted for Housebreaking and Larceny

UNITED STATES

v.

JAMES P. MITCHELL

Arraignment and plea

November 25, 1942

Come as well the Attorney of the United States as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; whereupon the defendant being arraigned upon each indictment, the reading whereof he specifically waives, pleads not guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth the like, and thereupon by consent of the United States Attorney the defendant is granted leave within ten days on each case to withdraw

said plea and demur to, or move to quash the said indictments, or otherwise plead as he may be advised.

In the District Court of the United States for the District of Columbia

Criminal Nos. 70884 to 70899, incl., 70900 to 70907, incl.

UNITED STATES

v.

JAMES P. MITCHELL

Motion to suppress

Filed March 31, 1943

Now comes the defendant through his counsel and moves the Court to suppress as evidence all property taken from the premises of defendant as a result of an illegal search and seizure and calls attention to affidavit annexed hereto.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

Service acknowledged:
BERNARD MARGOLIUS,
Bernard Margolius,
Assistant U. S. Attorney.
March 31, 1943.

6 In the District Court of the United States for the District of Columbia

Criminal Nos. 70884, 70885, 70886 to 70889, inc., 70900, 70901, 70902, 70907, 70906, 70905, 70904, 70903, 70902

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of James P. Mitchell

Filed March 31, 1943

DISTRICT OF COLUMBIA, *ss:*

James P. Mitchell, being first duly sworn on oath as required by law, deposes and says that he is the defendant in the above-

entitled cases and that in October 1942 he was the owner of premises located at 1427 N Street Northwest in the District of Columbia; defendant says further that he was the sole owner of said premises and that the police officers unlawfully entered said premises without a search warrant and illegally seized certain of his personal property, and much of his furnishings and fixtures was pillaged and rendered useless; affiant says that the property illegally seized has been retained by the police officers and has never been returned to the defendant. Affiant says that the police officers also illegally seized certain bed clothing, such as linens, spreads, towels, etc., and many personal papers belonging to the defendant and persons related to him, and such material could under no theory be considered proceeds of a crime; affiant says that the police officers realized their mistake and have returned to the defendant certain of the bed clothing seized but have retained much of it; affiant says further that the police officers illegally seized certain articles of jewelry, money, and postage stamps belonging to defendant and persons related to him and have failed to return same.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 30th day of March 1943.

[SEAL] JOHN S. MURDOCK,
Notary Public, D. C.

7 In the District Court of the United States for the District of Columbia

The Court resumes its session pursuant to adjournment: Mr. Justice McGuire, presiding.

* * * * *

No. 70905—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Order overruling motion to suppress

April 1, 1943

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his attorney, James J. Laughlin, Esquire; and thereupon the defendant's motion to suppress evidence, coming on to be heard,

after argument by the counsel, is by the Court overruled, to which action of the Court the defendant by his attorney prays an exception which is noted.

In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Motion for continuance

Filed April 1, 1943

Now comes the defendant and moves the Court for a continuance in this cause and calls attention to affidavit annexed hereto.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

Service acknowledged:
BERNARD MARGOLIUS,
Assistant U. S. Attorney.

Denied:
McGUIRE, *J.*,
3/3/143.

8 In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of James P. Mitchell

Filed April 1, 1943

DISTRICT OF COLUMBIA, *ss:*

James P. Mitchell being first duly sworn on oath as required by law deposes and says that there is a necessary witness in New

York City—Cosmo J. Testa—that he desires to have to testify in his behalf; that he is unable to go to trial without said witness and that his testimony and material and important; that he received notice of this trial on March 30th, and contacted his counsel who could not see him until Tuesday night, and he was then told by his counsel to endeavor to locate said witness by telephone on March 31st but has been unable to do so; he asks that the case be continued to such time as said witness can be produced.

JAMES P. MITCHELL,
James P. Mitchell.

Subscribed and sworn to before me this 1st day of April 1943.

CHARLES E. STEWART,
Clerk, District Court of the United States
for the District of Columbia.
By H. M. HULL, *Asst. Clerk.*

In the District Court of the United States for the District of Columbia

The Court resumes its session pursuant to adjournment: Mr. Justice McGuire, presiding.

9 No. 70,905—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Order overruling motion to continue

April 1, 1943

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his attorney, James J. Laughlin, Esquire; and thereupon the defendant's motion for continuance, coming on to be heard, after argument by the counsel, is by the Court overruled, to which action of the Court the defendant by his attorney prays an exception which is noted.

In The District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of bias and prejudice

Filed April 1, 1943

DISTRICT OF COLUMBIA, *ss:*

James P. Mitchell being first duly sworn on oath as required by law deposes and says that Judge Matthew F. McGuire has a personal bias and prejudice against him; affiant says that this is based upon information and belief and says that it is due to the rebuke administered to the mother of defendant in open court this morning when the hearing on the motion to suppress was in progress; affiant says that his mother was a necessary witness in the hearing and it was her intention to be in court at 10:00 A. M. but due to circumstances beyond her control she did not arrive until about 10:30 A. M. and endeavored to enter the courtroom of Judge McGuire but had difficulty in obtaining admittance and the said judge embarrassed and humiliated his mother in open court and accused her of creating a disturbance and lectured and rebuked her without giving her an opportunity to defend herself or to explain her side of the case; affiant says that this attitude on the part of the judge has created such feeling and bias and prejudice against defendant that he could not receive a fair trial from Judge McGuire and would be fearful to go to trial in the courtroom of Judge McGuire; affiant says further that the said judge became angered and incensed at defendant's counsel when defendant's counsel was attempting to defend affiant and to protect the constitutional and legal rights of the affiant and that the attitude of hostility on the part of said judge against defendant's counsel was so striking and so noticeable and it would in the opinion of affiant be absolutely impossible for the said judge to deal fairly and impartially with affiant and the feeling of said judge has created in the mind of the said judge such bias and prejudice toward affiaint that the said judge could not accord affiant a fair trial.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 1st day of April 1943.

CHARLES E. STEWART,
Clerk, District Court of the United States,
for the District of Columbia.
By MARION E. LEWIS, *Ass't. Clerk.*

I certify that this affidavit of bias and prejudice is filed in good faith and not for the purpose of delay. I certify further that the affidavit could not be filed sooner since the matters set forth did not arise until this day.

JAMES J. LAUGHLIN,
James P. Mitchell.
Council for Defendant.

APRIL 1, 1943.

Service acknowledged:
BERNARD MARGOLIUS,
Assistant U. S. Attorney.

11 In the District Court of the United States
for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Motion to summon witness for the defendant at the expense of the United States

Filed April 1, 1943

Now comes the defendant James P. Mitchell and says unto the Court that under the provisions of Section 109, Title 23, District of Columbia Code, that he needs the following witness at his trial both on the merits and in the motion to suppress: Cosmo J. Testa, 303 E. 146th St., New York, N. Y., defendant says that he is a necessary witness and he cannot safely go to trial without him; defendant says he is not possessed of sufficient means and is actually unable to pay the expenses of the said Testa; defendant says that the witness Testa will testify as to the illegal search and seizure and will testify also as to the police brutality when the police officers extracted from defendant by a force a confession

after being unlawfully held for nine days without being taken before a committing magistrate contrary to the Supreme Court ruling in the McNabb case.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 30th day of March 1943.

[SEAL] JOHN S. MURDOCK,
Notary Public, D. C.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

12 In District Court of the United States
for the District of Columbia

The Court resumes its session pursuant to adjournment: Mr. Justice McGuire, presiding.

* * * * *

No. 70,905—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Verdict

April 5, 1943

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his attorney, James J. Laughlin, Esquire, and thereupon the same jury that was respited in this case yesterday upon their oath say that the defendant is guilty on Count One of the indictment and guilty on Count Two, Petit Larceny; and thereupon each and every member of the jury is asked if that is his verdict and each and every member thereof say that the defendant is Guilty on Count One of the indictment and Count Two, Petit Larceny; and thereupon the defendant is committed to the Washington Asylum and Jail.

In the District Court of the United States
for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Motion for new trial

Filed April 8, 1943

Now comes the defendant through his counsel and moves the Court to set aside the verdict in the above entitled cause and grant a new trial and as reason therefor cites the following:

The verdict was contrary to the evidence.

13 The court erred in admitting evidence offered by the government.

The court erred in excluding evidence offered by the defendant.

The court erred in denying motion for continuance.

The court erred in refusing to sustain motion to suppress.

The trial judge was in error in refusing to disqualify himself after affidavit of bias and prejudice had been filed.

The assistant United States Attorney was guilty of misconduct.

The trial Judge was prejudiced toward the defendant.

The trial judge erred in refusing to keep the jury together after motion had been made.

The court erred in restricting cross-examination.

The court erred in requiring defendant to furnish original evidence against himself.

And the court erred in other matters apparent of record.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

Service acknowledged:
BERNARD MARGOLIUS,
Assistant U. S. Attorney.

In District Court of the United States for the District of Columbia

The Court resumes its session pursuant to adjournment: Mr. Justice McGuire, presiding.

* * * * *

No. 70905—Indicted for Housebreaking and Larceny

14 UNITED STATES

vs.

JAMES P. MITCHELL

Order overruling motion for new trial

April 16, 1943

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; and thereupon the defendants motion for a new trial coming on to be heard, after argument by the counsel, is submitted to the Court, and is by the Court, overruled, to which action of the Court the defendant by his attorney prays an exception which is noted.

In District Court of the United States for the District of Columbia

The Court resumes its session pursuant to adjournment: Mr. Justice McGuire, presiding.

* * * * *

No. 70905—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Judgment and sentence

May 6, 1943

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; and thereupon it is demanded of the defendant what

further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that for his said offense, the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment fo the period of One (1) year to Three (3) years.

15 In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Order extending time within which to settle bill of exceptions

Filed June 22, 1943

Upon motion of the defendant and the United States Attorney having consented thereto, it is by the Court this 22d day of June 1943

Ordered that the time within which Bill of Exceptions in the above-entitled cause be and the same is hereby extended to the 19th day of August 1943. And it is ordered,

By the Court:

MATTHEW F. MCGUIRE, *Justice.*

In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Assignment of errors

Filed June 23, 1943

The Court erred:

1. In failing to grant the motion to suppress.

2. The refusal of the trial judge to disqualify himself after affidavit of bias and prejudice had been filed.

3. In refusing to grant the motion for continuance.
4. In admitting evidence offered by the Government.
5. In refusing to admit evidence offered on behalf of the defendant.
16 6. In refusing to declare a mistrial when the Assistant United States Attorney was guilty of misconduct.
7. In restricting cross-examination.
8. In requiring defendant to furnish original evidence against himself.
9. In refusing to properly apply the Supreme Court ruling of the McNabb case.
10. In denying motion for a new trial.
11. In entering judgment for the United States.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this 19th day of June 1943 mailed copy of this memorandum to Bernard Margolius, Esq., Assistant United States Attorney.

JAMES J. LAUGHLIN,
James J. Laughlin,

In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Designation of record

Filed June 22, 1943

The Clerk will please prepare the record in the above-entitled cause and include therein the following:

1. Indictment.
2. Minute of Plea.
3. Motion to suppress.
4. Minute entry showing denial of motion to suppress.
5. Motion for continuance.
6. Minute entry showing denial for motion for continuance.
7. Affidavit of bias and prejudice.
7a. Motion to summon witnesses.

17 8. Bill of exceptions (to be furnished later).
9. Assignment of Errors.
10. This designation of record.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this day mailed copy of this Designation of Record to Bernard Margolius, Esq., Assistant United States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 19th day of June 1943.
This Designation of Record approved.

MATTHEW F. MCGUIRE, *Justice.*

In the District Court of the United States
for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Bill of exceptions

Filed Aug. 24, 1943

Be it remembered that this cause came on for trial on Thursday, April 1, 1943, before Justice Matthew F. McGuire, holding Criminal Court No. One of the District Court of the United States for the District of Columbia. The United States was represented by Bernard Margolius, Assistant United States Attorney, and the defendant was represented by James J. Laughlin.

On April 1, 1943, shortly before the case was called for trial, defendant filed a motion for continuance on the ground that a necessary witness for the defense, namely, one Cosmo Testa,
18 was in New York, and the defendant had not sufficient time to summons him. The District Attorney noted that the defendant had been notified of the trial more than three days prior thereto. The Court thereupon overruled the motion and an exception was duly noted. The defendant also filed on April 1, 1943, a motion to suppress evidence in all the cases pending against him in the District Court, accompanied by an affidavit, and a hearing was held on the motion.

In support of his motion, the defendant took the stand and testified that he was arrested on October 12, 1942, and confined in Police Precinct Station No. 8 without an attorney and without a charge having been placed against him, and that he was not taken before a committing magistrate until October 20, 1942. He further testified that he at no time authorized the police to enter his home or to take anything therefrom, and at no time consented to the police officer so doing and no one gave any police officer such permission on his behalf. The property which the defendant wanted returned, he testified, was of the character set forth in his affidavit. Defendant testified that he was brutally beaten by the police while in custody, and a number of wounds and bruises were inflicted on his body, and a tooth was knocked out. On cross-examination the defendant testified that the property which he wanted returned included certain jewelry which belonged to his aunt and uncle. On being asked to enumerate the property he did not include certain items which were the subject of this prosecution.

On behalf of the Government Charles T. Williams testified that he was a member of the Police Department and that he accompanied the defendant from his home to No. 8 Precinct about seven o'clock p. m. on October 12, 1942, at which time the defendant was not under arrest, but was in the company of the officer, upon request of the officer that the defendant go with him for questioning. When they reached the precinct station he and defendant and another officer went into the Detective Room, where the defendant immediately admitted a series of housebreakings and larcenies. Defendant told the officers that the goods which he stole were located in various parts of his home on N Street NW., and gave the officers express permission to go to his home
19 and obtain all the property that was there. The witness further testified that he at once went to the defendant's home with a patrol wagon and removed a considerable amount of property from various parts of the house. The witness further testified that the defendant was held in police precinct with no charge other than investigation being placed against him until Monday, October 19, 1942, and he was taken before the committing magistrate October 20, 1942. He testified that the defendant when taken to the precinct on October 12, 1942, was very cooperative and told the police that he wanted to help them in investigating the various housebreakings in which he was involved, and during the period when he was at the precinct even helped the various victims to identify their property. He testified that the defendant asked to be kept at the precinct station until the cases were cleared up. The witness further testified

that the defendant was not mistreated in any way, but on the contrary was shown every possible courtesy and was on occasions visited by his mother and others. The witness stated that when he obtained the property from the defendant's home he had no search warrant, but he testified further that before going to the defendant's home the defendant had told witness and other officers where they could find the property which had been stolen, and gave them permission to go to his home and recover it. The Government offered no further testimony. The motion to suppress was denied and an exception duly noted.

While the Court was hearing evidence on the motion to suppress, the defendant's mother, Mrs. Mary Blumenfeld, attempted to gain entrance to the courtroom through the main door in the rear of the court, which was guarded by a Deputy United States Marshal. At that time there was such a disturbance at the door that it attracted the attention of the Court, who inquired of the Marshal stationed at the door what the difficulty was. Counsel for the defendant thereupon told the Court that the person seeking admission was the defendant's mother. The Court thereupon informed the mother that the United States Marshal was stationed at the door in order to expedite and control the entrance and exit of spectators and others, and that a disturbance was not necessary. The mother thereupon took a seat in the courtroom and nothing more was said in open court about the incident. The Court recessed after its decision on the motion to suppress until 1:45 p. m.

Court reconvened at 1:45 p. m., at which time defense counsel called the Court's attention to the fact that during the noon recess the defendant had filed an affidavit of bias and prejudice against the trial judge. Thereupon the prospective jurors were excused from the courtroom and the trial court considered the affidavit to determine whether he should disqualify himself. Counsel for the defendant stated to the Court that the affidavit of bias and prejudice was in proper legal form, and that, therefore, the trial judge was unable to go into the truth or falsity of any of the matters contained therein, and as a result the trial judge was bound to disqualify himself. The Court invited comment on the affidavit by the Assistant United States Attorney. After due consideration of the affidavit and after advising counsel that it was making no point of the requirement that such an affidavit be filed ten days before the beginning of the term of Court, the Court pointed out that the factual basis set forth in the affidavit for the alleged bias against the defendant showed bias, if any, not against the defendant, but against the defendant's mother and the defendant's attorney, and declined to disqualify himself and ordered the trial to proceed.

Thereupon, a jury was selected and duly sworn to try the issues between the parties and an opening statement was made by counsel for the United States. Thereupon, to sustain the issues joined, the Government offered the following witnesses who testified substantially as follows:

Louisce H. Meem and her husband, Harry G. Meem, both testified that during the month of August 1942 they were away on vacation at Colorado Springs, Colorado, when they were notified that their home on 34th Place in the District of Columbia had been broken into and entered. When they returned in September they examined the premises and found that a considerable amount of property had been taken from their home. Thereupon, certain articles of personalty were shown to the witnesses who identified them as their property and which had been
21 stolen. These included several sets of cuff links (defendant at no time made any point of the fact that the Meem home had been broken into and property stolen therefrom). The witnesses further testified that their home was thoroughly ransacked, and that in almost every part of the house they found cigarette butts with cork tips, some of which bore the name "Raleigh." They further described how the house had been broken into and testified that the only one with authority to enter the home was one Plummer Fitch, their chauffeur and houseman.

Plummer Fitch being first duly sworn testified that he was the houseman and chauffeur of Mr. and Mrs. Meem and that he was in charge of the house while they were away on vacation. He testified that on the morning of August 12, 1942, he went to the Meem home where he discovered that it had been broken into through a basement window and found that the house had been "turned upside down." Every room had been ransacked. He found numerous cigarettes on the floor, all of which were of a cork tip variety. He notified the police.

Hortense Morris being first duly sworn testified that she was an employee of A. Kahn, Inc., and had been so employed for about twenty-five years; that she had charge of the records kept by that company of all sales of old gold and other articles, and that she made periodical reports of purchase of old gold and other items to the Police Department; that the record of her company disclosed that on August 13, 1942, one James Mitchell of 1427 W Street NW.. had sold certain cuff links and other articles at her store. She was unable to identify who James Mitchell, indicated by her records, was.

Charles T. Williams being first duly sworn testified that he was an officer of the Metropolitan Police Department and that on October 12, 1942, after a careful examination of pawnbrokers' and second-hand stores' reports for the previous three or four months, went

to A. Kahn, Inc., and obtained from that company certain cuff links which had been sold by one James Mitchell. The cuff links which he so obtained were identified by the witness as the same cuff links which has been identified during the trial by Harry G. Meem as being his and having been stolen at the time his house was
22 broken into. The witness further testified that he then went to 1427 W Street NW. but that no one by the name of Mitchell lived there and then methodically going to every address which resembled the one given he came to 1427 N Street NW. and there saw James Mitchell, the defendant here. This was about 2:00 in the afternoon. After going to Mr. Meem's home to have him identify the cuff links, Williams returned that evening to Mitchell's home in company of Officer Roland M. Kirby. They asked the defendant to accompany them. When the defendant asked where they were going they said they wanted to talk to him at the precinct station. No objection was made by the defendant to his being taken to the station. On the ride to the station the officers asked the defendant whether he wanted a smoke, and during the conversation about cigarettes he told them that he usually smoked Raleigh Cork Tips, and at one point Officer Williams went into a drugstore and while there, at the request of the defendant, purchased a package of cigarettes for him. When they reach'd the station they took the defendant in the Detective Room which was about ten or twelve feet away from the rail in the front part of the station. They then told the defendant that they knew what he had done and told him that he did not have to say anything, but that all they wanted to know was who had worked with him. The defendant thereupon freely admitted that he had broken into the home of Mr. and Mrs. Meem and admitted that he had taken the cuff links in question as well as the other property which was identified. He told the officers where they could find the property which had been stolen and gave them permission to go there and recover it. The defendant at all times was willing to cooperate with the police and at no time made any objection of being spoken to about the matter. The defendant made his admission of guilt within a few minutes after being brought into the station which was about 7:00 in the evening. The witness further testified that no force or persuasion was used upon the defendant and no threats or hope of reward or favor were held out to him. (Before the officers were questioned as to the statements made by the
23 defendant, the defendant out of the presence of the jury asked the trial court to exclude all the verbal statements made by him while in custody on the authority of McNabb v. United States, recently decided by the Supreme Court. Lengthy hearing and argument was had at the conclusion of which the Court remarked and defendant's counsel agreed that the issue drawn in the

testimony on the motion was one of fact whether the defendant had, at any time, made any admissions to the officers which they affirmed and he denied. The motion to exclude the alleged statements was denied and exception duly noted). The witness thereupon testified that after the defendant had admitted his guilt and had given him permission to go to his home and seize any property that was there, he returned to 1427 N Street NW., and there made a search of the premises where he recovered the property which had been stolen from the Meem home. He identified this property as the same which had been identified by Mr. and Mrs. Meem.

Roland M. Kirby being first duly sworn testified on behalf of the Government to the same facts as did Officer Charles T. Williams. Their testimony was substantially the same. The Government introduced in evidence all exhibits identified and rested. A defense motion for directed verdict was made and overruled and exception duly noted.

An opening statement was made by counsel for the defendant and the following testimony was offered on his behalf:

The defendant, James P. Mitchell, testifying on his own behalf, testified that he owned a rooming house at 1427 N Street NW., in the District of Columbia, which he operated, and that in the early afternoon of October 12, 1942, Officer Williams came to his house and stated that he was looking for a colored man named Mitchell; that after a few minutes the officer departed. That evening Officer Kirby came to his home and asked him to come to a car which was parked a short distance away. When he got to the car with Officer Kirby he was forced to enter the car where Officer Williams was seated at the wheel. The defendant asked both officers "What is this all about?" and the officers replied "You will
24 soon find out." Defendant stated that he had at all times denied any participation in the housebreaking and larceny herein involved. He testified further that he was beaten in the car and from time to time in the police precinct, and that on one occasion a tooth was knock from his mouth. Defendant testified further that he was taken to a committing magistrate for the first time on October 20, 1942. He testified also that at no time did he authorize the police officers to visit his home. He further testified that he did not visit A. Kahn, Inc., for the purpose of selling any old gold, and further testified that his name was carried in the telephone directory for a considerable period of time under the name of James P. Mitchell with an address at 1427 N Street NW.

On cross-examination defendant stated that although he was beaten so that his face became swollen and his skin bruised, he made no complaint to anyone at the precinct station, and his first complaint about the tooth that was broken was made at the jail for the first time about four or five weeks later. He testified further

that although he was severely beaten he made no admissions of guilt. With respect to the tooth he testified that this tooth broke off on the line even with the gum as a result of a punch made by one of the officers. This tooth was a molar. He took the broken part of the tooth from his mouth in the presence of the officers and they permitted him to put the same in his pocket. When asked where the tooth was at the present time he could not give any explanation. He testified further that no other tooth was hurt and had no dental treatment for that tooth until the middle of December. In being asked about police brutality, he testified that he was beaten continuously from the time he arrived at the precinct station for about fifteen or eighteen hours when he went into what he described as a coma, being unconscious from that time on for a considerable period. He admitted, however, that the next evening, that is, October 13, 1942, he was taken to Police Headquarters where he was photographed by a police photographer at which time he said nothing to the photographer or anyone else about his physical condition.

Thereupon Barbara Jenkins testified that she was defendant's fiancee, and that she had visited him at No. 8 Precinct Station four or five days after October 12th and noticed marks and bruises about his body.

Thereupon Mary Blumenfeld testified that she was defendant's mother, and that she visited the police precinct while defendant was then confined and that she observed bruises and marks on his body, and that at least on one occasion she observed him spitting blood. The defendant complained to her that he had been kicked in the stomach and that he had suffered severe injury.

Thereupon, Cosmo Testa testified for the defendant that he was a friend of defendant; that he saw the defendant at police precinct on the night of October 12, 1942, where he observed certain marks and bruises on his body and about his face. On cross-examination Cosmo Testa testified that the defendant's face was greatly swollen and the skin discolored. He admitted that he had been convicted of a crime. Thereupon the defendant rested.

In rebuttal the Government called Roy D. McClure, a member of the Metropolitan Police Department, who testified that he photographed the defendant on the evening of October 13, 1942, while the defendant was in custody. The photograph was identified and admitted in evidence over the objection and exception of the defendant. Thereupon the Government rested. A motion for directed verdict was again made and overruled, and exception duly noted.

After final arguments by counsel and the Court's instructions, the jury retired to deliberate and thereafter returned with a verdict

of guilty. Defendant was thereupon committed and a motion for a new trial was filed and denied and the defendant sentenced.

For the reason that the foregoing matters are not of record, the defendant moves that they be made of record so that he may pursue his appeal to the United States Court of Appeals for the District of Columbia, which is done; and the de-
26 fendant presents this his Bill of Exceptions and requests that the same be filed, which is done this 24th day of August 1943.

By the Court:

MATTHEW F. MCGUIRE, *Justice.*

Bill submitted by:

JAMES J. LAUGHLIN,
Attorney for Defendant.

Consent to the settling and signing of this Bill of Exceptions is hereby given.

CHARLES B. MURRAY,
Assistant United States Attorney.

8-23-43.

In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

v.

JAMES P. MITCHELL

Supplemental designation of record

Filed July 12, 1943

The clerk will please include the following matters in the record:

1. Verdict.
2. Judgment and sentence.
3. Motion for new trial.
4. Minute Entry Denying motion for new trial.
5. Order extending time within which to settle Bill of Exceptions.
6. This supplemental designation of record.
7. Clerk certificate.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

27 I certify that copy of this Supplemental designation was mailed to Bernard Margolius, Assistant United States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 30th day of June 1943.
This Supplemental Designation of Record ordered.

BOLITHA J. LAWS, *Justice.*

In the United States Court of Appeals for the District of Columbia

No. 8533—April Term, 1943

No. 70905—Criminal, District Court

JAMES P. MITCHELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Order

(Filed Sept. 15, 1943)

On consideration of appellant's motion filed herein on August 23, 1943, it is

Ordered that the Clerk of the District Court of the United States for the District of Columbia be, and he is hereby authorized and directed to certify and transmit to the Clerk of this Court the originals of all papers pertinent to the appeal in this cause.

Dated September 15, 1943.
Per Curiam.
A true Copy,
Test:
[SEAL]

JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia.

28 In the District Court of the United States for the District of Columbia

Holding a Criminal Term—Criminal No. 70905

UNITED STATES

vs.

JAMES P. MITCHELL

Supplemental designation of record

Filed Sept. 20, 1943

The Clerk of the Court will please include as a further part of the record on appeal in the above-entitled cause the following:

Order of United States Court of Appeals, dated September 15, 1943, directing and authorizing the Clerk of the District Court of the United States for the District of Columbia to certify and transmit to the Clerk of the United States Court of Appeals for the District of Columbia the originals of all papers pertinent to the appeal in this cause.

JAMES J. LAUGHLIN,
Attorney for Defendant.

I consent to this Supplemental Designation of Record:

CHARLES B. MURRAY,
Charles B. Murray,
Assistant United States Attorney.

This Supplemental Designation of Record approved:

JAMES M. PROCTOR, *Justice.*

[Clerk's certificate to foregoing transcript omitted in printing.]

32 In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Notice of appeal

Filed June 10, 1943

James P. Mitchell, Washington Asylum and Jail.
James J. Laughlin, National Press Bldg.

Offense: Housebreaking and Larceny.

Date of judgment: June 4, 1943.

Brief description of judgment or sentence: One and one-half to four and one-half years in prison.

Name of prison where now confined, if not on bail: Washington Asylum and Jail.

I, the above-named appellant, hereby appeal to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

JAMES P. MITCHELL,
Appellant.

JAMES J. LAUGHLIN,
James J. Laughlin,
Attorney for Appellant.

Date: June 10, 1943.

GROUNDS OF APPEAL

Just to what extent is the Supreme Court ruling in the McNabb case applicable to admissions and confessions made while in custody.

A true copy.

Test:

[SEAL]

CHARLES E. STEWART,
Clerk.

MARION E. LEWIS,
Deputy.

33 In the District Court of the United States for the District of Columbia

Criminal No. 70899—Charge Housebreaking & Larceny

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Docket entries

Attorney, James J. Laughlin.

1942

Nov. 16—Presentment and indictment filed: Defendant committed to W. A. & Jail.

Nov. 19—Appearance of James J. Laughlin entered.

Nov. 20—Arraigned, Plea Not Guilty, 10 days, etc.

Nov. 25—Bond fixed by the Court at $15,000.00 to cover all cases.

Dec. 23—Bond fixed by the Court at $5,000.00 to cover cases 70884 thru 70907. Recog. $5,000.00 taken with Wm. J. O'Neil, surety, covering case 70884 thru 70907.

1943

Mar. 31—Motion to Suppress and affidavit in support thereof filed.

May 24—Motion to suppress the evidence and affidavit in support thereof filed, submitted without argument and denied. Exception. Jurors sworn on voir dire. Jury sworn and respited until tomorrow.

May 25—Trial resumed, same jury; deft's prayer filed. Case respited until tomorrow.

May 26—Trial resumed, same jury; Verdict Guilty as indicated. Defendant remanded to W. A. & Jail.

May 29—Motion for new trial filed.

June 4—Motion for a new trial is argued and overruled. Exception. Sentenced to Imprisonment. For period of 1½ yrs. to 4½ yrs. to run consecutively with 70905. Judgment signed (Laws, *J.*). Term continued to July 15, 1943.

June 10—Notice of Appeal filed. Pauper affidavit and Order filed (Laws; *J.*).

Date June 10th, 1943.

Attest:

[SEAL]

CHARLES E. STEWART,
Clerk.

MARION E. LEWIS,
Deputy Clerk.

34

In the United States District Court

No. 70899

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of poverty

Filed June 10, 1943

DISTRICT OF COLUMBIA, *ss:*

James P. Mitchell, being duly sworn according to law deposes and says that he is the defendant in the above-entitled action; that he is a citizen of the United States, and that because of his poverty he is unable to pay the costs of said action or to give security therefor.

(Signed) JAMES P. MITCHELL.

Sworn to and subscribed before me this 9th day of June 1943.

[SEAL]

(Signed) LILLIAN A. TRAMMELL,
Notary Public, D. C.

Order of court

It is ordered that the defendant in the above-entitled action be and he hereby is permitted to prosecute said action to conclusion without prepayment of fees or costs. I certify that this appeal is taken in good faith and not for purposes of delay.

BOLITHA J. LAWS, *District Judge.*

Dated June 10, 1943.
A true copy.
Test:
[SEAL]

CHARLES E. STEWART,
Clerk.

MARION E. LEWIS,
Deputy.

35 In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

v.

JAMES P. MITCHELL

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

In the District Court of the United States for the District of Columbia

Holding a Criminal Term—October Term, A. D. 1942

G. J. No. Orig., Criminal No. 70899, Housebreaking and Larceny

Indictment

Filed Nov. 16, 1942

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one James P. Mitchell, on, to wit, the first day of October 1942, and at the District of Columbia aforesaid, the dwelling of one Anthony F. G. Lucas and one Ruth H. Lucas, there situate, feloniously did enter, with intent to commit therein the crime of larceny, to wit, with intent the goods, chattels, and property in the said dwelling then and there being, feloniously to steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Second count: And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one James P. Mitchell, on, to wit, the first day of October 1942, and at the District of Columbia aforesaid, one
36 revolver, of the value of forty-five dollars, one revolver, of the value of thirty-five dollars, one revolver, of the value of one hundred dollars, one rainiature pistol, of the value of three dollars, one set of cuff links, of the value of forty-five dollars, one watch, of the value of thirty-five dollars, and one knife, of the value of three dollars and fifty cents, of the goods, chattels, and property of one Anthony F. G. Lucas; one camera, of the value of forty-five dollars, one pencil, of the value of thirty dollars, one watch, of the value of eighty dollars, one fountain pen, of the value of twelve dollars and fifty cents, two finger rings, each of the value of ten dollars, one pair of opera glasses, of the value of twenty-five dollars, and one dollar in money, of the value of one dollar, of the goods, chattels, money, and property of one Ruth H. Lucas, then and there being found in the dwelling referred to in the first count of this indictment, feloniously did steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

EDWARD M. CURRAN,
Attorney of the United States in and for the District of Columbia.

A true bill:
HARRY W. BOSS, *Foreman.*

In the District Court of the United States for the District of Columbia

The Court resumes its session pursuant to adjournment: Mr. Justice Adkins, presiding.

* * * * *

UNITED STATES

v.

JAMES P. MITCHELL

No. 70885, 70886, 70887, 70888, 70889, 70890, 70891, 70892, 70893, 70894, 70895, 70896, 70897, 70898, 70899, 70900, 70901, and 70902—Indicted for Housebreaking and Larcency

37 *Arraignment and plea, etc.*

November 20, 1942

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; whereupon the defendant being arraigned upon each indictment, the reading whereof he specifically waives, pleads not guilty thereto on each case, and for trial puts himself upon the country and the Attorney of the United States doth the like; and thereupon by consent of the United States Attorney, the defendant is granted leave within Ten (10) days to withdraw said plea and demur to, or move to quash each said indictment, or otherwise plead as he may be advised.

In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Affidavit of bias and prejudice

Filed May 12, 1943

Now comes the defendant in the above-entitled cause and says unto the Court that the Honorable Matthew F. McGuire has a

personal bias and prejudice against him and that defendant believes it would be impossible to obtain a fair and impartial trial before Judge McGuire. The personal bias and prejudice consist of the following:

1. On the day set for the trial of defendant in another case, that is to say April 1, 1943, a hearing was held before the said judge on defendant's motion to suppress certain evidence and while the hearing was in progress the said judge accused the mother of defendant of creating a disturbance in the court room and severely rebuked her in the presence of all persons concerned. The rebuke was unnecessary and uncalled for and the said judge was so prejudiced that he prevented the mother of defendant from making any explanation. When in truth and in fact the mother had been delayed in getting to the court house and merely
38 sought to enter the court room where she was needed as a witness and the marshall on duty at the door leading to the court room provoked the disturbance. This incident which was in no sense justified created such hostility and such an air of bad feeling toward the defendant that it was impossible for the said judge to deal fairly with the defendant and caused the defendant to file an affidavit of bias and prejudice before the said judge, said affidavit of bias and prejudice having been overruled by the said judge and the action of the said judge in overruling this affidavit has been made an assignment of error to be determined by the United States Court of Appeals.

2. Defendant says when he was on the witness stand testifying in the motion to suppress the trial judge exhibited a feeling of prejudice and hostility toward him and by his manner of expression and gestures made by him the defendant is firmly convinced that the said judge has a strong resentment against him and believes that the defendant is guilty of the offenses with which he is charged and in this situation the trial judge could not deal fairly with the defendant.

3. During the trial of the defendant before the said judge the defendant believes that the said judge took a violent dislike toward him and on several occasions when there were conferences at the bench the trial judge pounded his fist on the desk and expressed in such a loud manner that it was apparent to the jury that the said judge had a strong feeling against the defendant, and the defendant believes that the jury felt that the trial judge wanted the defendant convicted, and on this account it was impossible for the defendant to receive a fair and impartial trial before the said judge.

In view of the above the defendant is of the opinion that Judge McGuire has a definite personal bias and prejudice against him; that he has exhibited the personal bias and prejudice in

such a manner as to leave no doubt in the mind of the defendant that he could not obtain a fair and impartial trial at the hands of the said judge. The defendant says further that when the defendant first came into court for sentence after his conviction the said judge expressed the belief that the defendant was entitled to the benefit of probation and was inclined to grant
39 probation to the defendant in view of the defendant's prior good record, but permitted Mr. Margolius, Assistant United States Attorney, to state to the said judge that the defendant deserved a very severe sentence and also permitted Mr. Margolius to state that a police officer had stated to Mr. Margolius that the defendant had told the police officer, who was unnamed, that the defendant intended after he had served his sentences in these cases to do the same thing all over again. Defendant says that this is wholly untrue and that no such statement as related by Mr. Margolius was ever made to any police officer or to any other person. As a matter of fact, information was conveyed to the defendant that certain police officers had stated that Mr. Margolius had a bitter dislike for and intense hatred of the defendant and would move heaven and earth to see that he was placed in the penitentiary just as quickly as Mr. Margolius could set the machinery of the courts into action and that the defendant's case was in the opinion of Mr. Margolius his main case for the year 1943. Defendant says that his attorney realizing that the statements made by Mr. Margolius had no support in the record and were based on the wildest possible speculation was anxious that the judge receive the true facts as to just what had happened and an effort was made by defendant's counsel to reply in kind to Mr. Margolius but the trial judge would not permit defendant's counsel to make the necessary explanation or to permit him to counteract or soften the damaging nature of Mr. Margolius' untrue statements. It is the view of the defendant therefore that in this state of the record that the defendant could not be dealt with fairly in the courtroom of Judge McGuire.

Defendant says that this affidavit is not filed within the ten-day limit specified in the statute due to the fact that notice of trial was received by his counsel on the late afternoon of Friday, May 7, 1943. And actual word could not be relayed to the defendant until Sunday, May 9, 1943, when his counsel asked defendant's mother to tell him when she visited defendant at the jail on May 9. This affidavit was forwarded by defendant's counsel to defendant by special delivery on May 9, 1943 but did not reach him at the jail until the late afternoon of May 10, and there
40 is now no Notary Public on duty at the jail the affidavit could not be executed until defendant arrived at the court

house on May 12, 1943. It is necessary to make this statement in order to satisfy the requirements of the statute.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 12th day of May 1943.

LILLIAN A. TRAMMELL,
Notary Public, D. C.

I certify that this affidavit is filed in good faith and not for the purpose of delay.

JAMES J. LAUGHLIN,
James J. Laughlin,
Counsel for Defendant.

Copy of this affidavit mailed to Bernard Margolius, Esq.

JAMES J. LAUGHLIN.
James J. Laughlin.

MAY 11, 1943.

In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES

v.

JAMES P. MITCHELL

Motion to suppress

Now comes the defendant and moves the Court to suppress the evidence seized in the above entitled cause inasmuch as it was obtained in violation of the constitutional rights of the defendant.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

Let this be filed. It appearing subject matter of this
41 motion previously has been passed upon by the Court, motion to suppress will be overruled. Exception granted defendant.

BOLITHA J. LAWS, *J.*

In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of James P. Mitchell

DISTRICT OF COLUMBIA, *ss:*

James P. Mitchell being first duly sworn on oath as required by law deposes and says that he is the defendant in the aboye-entitled cause and that in October 1942 he was the operator of the rooming house located at 1427 N St. NW., in the District of Columbia, and that the police officers unlawfully and without the consent or permission of the defendant entered the premises and seized certain property then in the possession of the defendant and said property was seized without a warrant. The property seized is included in the subject matter of the above-numbered indictment.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 24th day of May 1943.

CHARLES E. STEWART,
Clerk.
By SAMUEL SILVERMAN,
Deputy Clerk.

42 In the District Court of the United States for the District of Columbia

The court resumes its session pursuant to adjournment: Mr. Justice Laws presiding.

* * * * * *

No. 70899—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Motion to suppress denied, etc.

May 25, 1943

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superindendent of the

Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; and thereupon the defendant's motion to suppress the evidence and affidavit in support is submitted to the Court without argument and is denied. To which action of the Court the defendant is allowed an exception which is noted; whereupon the jurors of the regular petit Jury panel serving in Criminal Court Number Three being called, are sworn upon their voir dire; and thereupon comes a jury of good and lawful persons of the District of Columbia, to wit:

Mrs. Rita S. Aires.	Francis A. Jones.
Mrs. Alice C. Quigley.	Thomas G. Jones.
George W. Birch.	James J. Lawless.
Mrs. Margaret S. O'Donnell.	Milton D. Kendall.
Albert J. Nalls.	Roy L. Loan.
Mrs. Louise P. Nelson.	Charles E. Perry.

who being sworn to well and truly try the issue joined herein, are respited until the meeting of the Court tomorrow.

43 In the District Court of the United States for the District of Columbia

The court resumes its session pursuant to adjournment: Mr. Justice Laws presiding.

* * * * * *

No. 70899—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Verdict

May 26, 1943

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon the said jury upon their oath say that the defendant is guilty in manner and form as charged in the indictment; whereupon said defendant is remanded to the Washington Asylum and Jail.

In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES

v.

JAMES P. MITCHELL

Motion for new trial

Filed May 29, 1943

The defendant moves for a new trial.

When this motion is argued the point will be stressed as to the proper applicability of the *McNabb* case in the Supreme Court. It may well be since defendant was held so long in custody—eight days—before being taken to a committing magistrate that all statements oral and verbal while in custody must be excluded. If that be so then this verdict is erroneous.

There is also the question as to the suppression of evidence and whether a prior ruling—under the circumstances of such ruling—foreclosed the question here.

44 There were no errors in the admission or exclusion of evidence and the trial judge was eminently fair throughout. It is exceedingly doubtful whether any trial judge exercised such painstaking care in protecting the rights of an accused as the trial judge did here. We must acknowledge that fact and express our approval.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

I certify that I have this day mailed copy of this motion to Bernard Margolius, Esq., Assistant U. S. Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 28th day of May 1943.

In the District Court of the United States
for the District of Columbia

The court resumes its session pursuant to adjournment: Mr. Justice Laws, presiding.

* * * * *

No. 70899—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Judgment and sentence, etc.

June 4, 1943

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, esquire; and thereupon the defendant's motion for a new trial, coming on to be heard after argument by the counsel, is by the Court overruled, to which action of the Court the defendant is allowed an exception which is noted; and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court, that, for his said offense, the said defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of One and one-half (1½) years to Four and one-half (4½) years, said sentence to run concurrently with sentence imposed in Criminal Case No. 70905.

In the United States District Court

No. 70899

UNITED STATES

vs.

JAMES P. MITCHELL

Affidavit of poverty

Filed June 10, 1943

DISTRICT OF COLUMBIA, *ss:*

James P. Mitchell, being duly sworn according to law, deposes and says that he is the defendant in the above-entitled action; that he is a citizen of the United States, and that because of his poverty he is unable to pay the costs of said action or to give security therefor.

JAMES P. MITCHELL.

Sworn to and subscribed before me this 9th day of June 1943.

LILLIAN A. TRAMMELL,
Notary Public, D. C.

Order of court

It is Ordered that the defendant in the above-entitled action be and he hereby is permitted to prosecute said action to conclusion without prepayment of fees or costs. I certify that this appeal is taken in good faith and not for purposes of delay.

BOLITHA J. LAWS, *District Judge.*

Dated: June 10, 1943.

45 In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Assignment of errors

Filed June 22, 1943

The Court erred:

1. In denying the motion to suppress evidence.
2. In admitting testimony offered by the Government as to verbal statements made by the defendant while in custody.
3. In rejecting instructions requested by the defendant.
4. In refusing to give proper effect to the doctrine of the Supreme Court in the *McNabb* case.
5. In denying the motion for a new trial.
6. In entering judgment for the United States.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this 19th day of June 1943 mailed copy of this memorandum to Bernard Margolius, Esq., Assistant United States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Designation of record

Filed June 22, 1943

The Clerk will please prepare the record in the above entitled cause and include therein the following:

1. Indictment.
2. Motion to suppress.
3. Minute entry showing denial of motion to suppress.
4. Minute entry showing plea of not guilty.

4a. Affidavit of bias and prejudice..

5. Bill of exceptions (to be furnished later).
6. Assignment of errors.
7. This designation of record.
8. Clerk's certificate.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this day mailed copy of this Designation of Record to Bernard Margolius, Esq., Assistant United States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 19th day of June 1943.
This Designation of Record ordered.

BOLITHA J. LAWS, *Justice.*

In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Supplemental designation of record

Filed June 30, 1943

The Clerk will please prepare a Supplemental Designation of Record which will include therein the following:

1. Verdict.
2. Judgment and sentence.
3. Motion for new trial.
4. Minute entry showing denial of motion for new trial.

4a. Pauper affidavit and order of court thereon.

48 5. This supplemental designation of record.

6. Clerk certificate.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this day mailed copy of supplemental designation of record to Bernard Margolius, Assistant United States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 30th day of June 1943.
This Supplemental Designation of Record ordered.

BOLITHA J. LAWS, *Justice.*

In the District Court of the United States for the District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

v.

JAMES P. MITCHELL

Bill of exceptions

Filed July 12, 1943

Be it remembered that this cause came on for trial on Monday, May 24, 1943, before Justice Bolitha J. Laws, holding Criminal

Court No. 3 of the District Court of the United States for the District of Columbia. The United States was represented by Mr. Bernard Margolius, Assistant United States Attorney, and the defendant was represented by Mr. James J. Laughlin. Before the jury was impaneled the defendant moved the Court to suppress evidence. This was denied, it being shown to the Court that such a motion in this case was made before Mr. Justice McGuire and overruled. Exception was noted and allowed. Whereupon
49 a jury was selected, and being satisfactory to both parties, was sworn to try the issues. An opening statement was made by the Government. Whereupon, to sustain the issues the Government introduced the following testimony:

Anthony Lucas being first duly sworn testified that his home, located in the District of Columbia, had been broken into on the 1st day of October 1942 and that a considerable amount of property had been taken from his home. (Defendant during the trial did not dispute the fact that the Lucas home had been broken into and property stolen therefrom.) The witness identified certain property exhibited to him, including three revolvers, a camera, a pair of binoculars, jewelry, and various other items. The witness testified further that he did not know the defendant, and he had not given him permission to enter his home or remove anything therefrom.

Charles T. Williams being called as a Government witness, and first duly sworn, testified that he was a member of the Metropolitan Police Department and assigned to the investigation of this case. He testified that on the afternoon of October 12, 1942, he visited a certain address in the fourteen hundred block of N Street NW. where he had a conversation with the defendant. The purpose of this conversation was to ascertain whether or not the defendant was the individual for whom he was looking with respect to housebreaking. That evening between 6 and 7 o'clock he returned to the fourteen hundred block of N Street in the company of Detective Roland Kirby.

They told the defendant that they would like to talk to him and would he mind coming with them. The defendant asked them if they could talk to him where they were, to which the officers replied that they would rather talk to him at the precinct station. Whereupon, he accompanied them without objection to No. 8 Precinct Station. The witness further testified that during the ride to the precinct station they had no conversation about this case. When they reached the precinct station the officers and the defendant went into the detective room where they held a conversation. The defendant was told by the detectives that he did not have to answer any questions if he did not want to, but that

50 all they wanted to find out was who was working along with him. At this time the defendant readily admitted that he had broken into the Lucas home, and had removed therefrom a considerable amount of property and told the officers that they could find that property in various parts of the defendant's home on N Street, and some of it was located in two trunks in the basement and that they could go to his home with his permission and recover the same. The witness further testified that the defendant from the moment he was brought into the station was highly cooperative and freely admitted his guilt without persuasion or inducement or threats or hope of reward or inmunity, and that it was only a few minutes after he was brought into the precinct station that he told them the whole story. The witness further testified that he and Detective Kirby thereupon immediately left to return to the fourteen hundred block of N Street and from various parts of the house, as indicated by the defendant, recovered the numerous items which had been identified earlier in the trial by witness Lucas as being his property and stolen on the night of October 1, 1942. Upon cross-examination the officer testified that he did not strike or beat the defendant or in any manner mistreat him.

Max Zweig being first duly sworn testified that he was a dealer in second-hand goods, and upon examination of the property which had been identified and introduced as evidence in this case stated that it was greatly in excess of $50.00.

Roland M. Kirby being first duly sworn testified that he was a member of the Metropolitan Police Department and has been for eighteen years; that he visited the defendant's home on N Street on the night of October 12, 1942, between 6 and 7 o'clock and accompanied him to the car in which Officer Williams was seated. They asked the defendant to come with them because they wanted to talk to him. He agreed and they immediately went in the automobile to No. 8 Precinct where he was taken to the detective room. Whereupon, the witness testified that the defendant freely admitted his guilt and stated that he had broken into the Lucas home and stolen the property in question. The defendant told him and Officer Williams about where they could find the property in his home and gave them permission to go there and re-

51 cover the same. The defendant at all times was willing to cooperate with the police and at no time made any objection to being spoken to about the matter. He was advised that he did not have to say anything, but did, within a period of ten or fifteen minutes, give them the whole story including the permission to make the search and seizure. Upon cross-examination the witness testified that the defendant was booked at No. 8 Precinct on the night of October 12, 1942, about fifteen minutes after he was

brought into the precinct station, and just as the officers were going to return to the N Street home to get the property. The witness stated that no housebreaking charge was placed against defendant until October 19th and that he was not taken before a committing magistrate until October 20th. (It was explained to the Court at the bench, out of the presence of the jury, that the reason why the defendant was kept at the precinct station for almost a week without being taken before a committing magistrate was the fact that the police officers had recovered from the defendant's home a great amount of property that had been stolen in more than thirty other housebreakings in the Northwest section of Washington, the different property filling almost an entire room at the precinct station. During this period defendant cooperated with the police and the victims of these housebreakings in identifying the property. The defendant remained at the precinct station for that purpose without objection on his part.) On cross-examination the witness testified that he did not strike or beat the defendant or in any manner mistreat him. On the contrary the defendant required no persuasion or inducement to admit his guilt.

Before either of the police officers were questioned about any statements of the defendant while in custody, there was a conference at the bench participated in by the trial judge, Assistant United States Attorney and counsel for the defendant. Counsel for the defendant asked the trial judge to exclude all verbal and written statements made by the defendant relying on the case of McNab v. United States, recently decided by the Supreme Court but this was denied and exception duly noted. The Government thereupon rested.

52 Motion for directed verdict was made and overruled, and counsel for defendant thereupon made an opening statement. Thereupon the following testimony was offered on behalf of the defendant:

James P. Mitchell, the defendant, testified in his own behalf that for some time he had conducted a rooming house at 1427 N Street NW., and that Officer Williams visited his house about 2 o'clock in the afternoon of October 12, 1942, and stated that he was looking for a colored man named Mitchell and departed within a few minutes. He further testified that in the early part of that same evening Officer Kirby came to his house and asked him if he would go to his automobile which was parked on N Street, a short distance from defendant's home. Defendant testified that he went to the automobile and that Officer Williams, who had been to his home in the early part of the afternoon, was seated behind the wheel. He testified that he was forced to enter the car, getting into the back seat with Detective Kirby. He asked the officers what it was all about, to which the officers replied, "You will

soon find out." Defendant testified further that he was slapped two or three times by both officers while in the car, and after being taken to the precinct station was beaten, suffering many injuries and bruises. As a result of one blow to the face the defendant testified that one of his molars was broken off at the gum line. Defendant testified that he was kept in the police precinct until October 20th, when he was taken before a committing magistrate for the first time. He denied all participation in connection with the Lucas case. Upon cross-examination the defendant stated that although he was beaten so that his face became swollen and his skin bruised, he made no complaint to anyone at the precinct station although he admitted seeing various officers and the police captain in charge of the station. He testified further, that although he was so beaten he made no admissions of guilt as testified to by the police officers. With respect to the broken tooth, he testified that this tooth broke off on a line even with the gum as a result of a punch made by one of the officers, and that he took the broken portion of the tooth from his mouth in the presence of the officers who permitted him to put the same in his
53 pocket. However, he could not produce the tooth and could not explain its absence. Furthermore, he testified that no other tooth was hurt, and that he did not suffer any pain from the injured tooth until many weeks later and, in fact, did not have any dental treatment until the middle of December. He denied that the entire tooth was, in fact, removed by the jail dentist in the middle of December because of trouble which started about that time. Defendant further admitted that about midnight of the night of his arrest the police officers took him back to his home where they permitted him to feed his dog.

Mary Blumenfeld, being first duly sworn testified on behalf of defendant that she visited the defendant while in the police precinct, and that she observed the physical condition of the defendant and noticed marks and bruises on his body and on one occasion noticed he was spitting blood. The defendant complained to her of severe pains in his stomach. Thereupon the defendant rested.

In rebuttal the Government called Captain Arthur C. Belt, the Commanding Officer of No. 8 Precinct, who was on duty at No. 8 while the defendant was there confined. He testified that the defendant made no complaint to him of any police brutality or mistreatment, and at no time did he observe anything about the defendant which would indicate police beating or mistreatment.

Anthony Lucas was recalled and testified that he saw the defendant in the precinct station on the 13th or 14th of October and had a conversation with him. From his observation there

was nothing about the appearance of the defendant which indicated that he had been beaten or mistreated, and the defendant made no statement to him of such fact. Thereupon the Government rested.

Defendant renewed his motion for a directed verdict, the same was overruled and exception duly noted. Final statements were made by Counsel and the Court instructed the jury. The jury retired and returned with a verdict of guilty.

For the reason that the foregoing matters are not of record, the defendant moves that they be made a record so that he may pursue his appeal to the United States Court of Appeals for the District of Columbia, which is done; and the defendant
54 presents this his Bill of Exceptions and requests that the same be filed, which is done this 12th day of July 1943.

By the Court:

BOLITHA J. LAWS, *Justice.*

Consent to the settling and signing of this Bill of Exceptions is hereby given.

BERNARD MARGOLIUS,
Assistant United States Attorney.

[Clerk's certificate to foregoing transcript omitted in printing.]

55 In United States Court of Appeals, District of Columbia

Nos. 8533–8547

JAMES P. MITCHELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeals from the District Court of the United States for the District of Columbia

Argued October 8, 1943. Decided October 25, 1943

Mr. James J. Laughlin, for appellant.

Mr. Charles B. Murray, Assistant United States Attorney, with whom Messrs. Edward M. Curran, United States Attorney, and Bernard Margolius, Assistant United States Attorney, were on the brief for appellee.

Before GRONER, C. J., and MILLER and EDGERTON, JJ.

Opinion

PER CURIAM:

Appellant was tried and convicted on two indictments, each charging housebreaking and larceny. The trials were separate, but as the main ground of alleged error is the same, and as the evidence, except as to the house burglarized and the property stolen, is also the same, the appeals in both cases were consolidated for argument in this Court. The evidence against appellant consists of stolen property found in his house and of alleged verbal confessions of guilt. The seizure of the property, without search warrant, was said by the officers to have been made with appellant's consent and as a part of his confession made immediately after his arrest freely, voluntarily and without compulsion or inducement of any sort. Appellant denied he had given consent to have his house searched and denied that he had made any confession to the police. But the trial judge who heard the question—apart from the jury—admitted the evidence and it is this ruling which is attacked on this appeal. If this were all, the answer would be plain, but as it happens, there is another element
56 in the case which, as we think, places a different aspect on the question. This grows out of the fact that after appellant was arrested and brought from his home to the Police Station and interrogated by the officers, the confession obtained and his consent to the search given, he was continued under arrest for more than a week by the police without being brought before a magistrate, commissioner or court, and this in the very teeth of the statute which commands arraignment "immediately and without delay."[1] It was almost this identical situation which, the Supreme Court in McNabb v. U. S. said, makes a confession, voluntary or involuntary, inadmissible in evidence on the trial of the case.[2]

In the McNabb case five uneducated mountain men were arrested for the murder of a revenue officer. They were taken into custody and more or less continuously questioned for two days in the Federal Building in Chattanooga, Tennessee, by members of the Alcohol Tax Unit before they were committed. Toward the end of the period of their detention they made confessions which the trial court decided were voluntary. After their conviction, on appeal to the Supreme Court, that Court held the confessions inadmissible and reversed the judgments. The principle of the decision was that since the Congressional requirement that police officers take an accused person before a judicial officer for commitment with reasonable promptness was designed to avoid "all

[1] R. S. D. C. § 397; Act July 16, 1862, Ch. 181, Sec. 10, V. 12, p. 581; D. C. Code (1940), Title 4, Sec. 140.

[2] 318 U. S. 332.

the evil implications of secret interrogations of persons accused of crime," and to check "resort to those reprehensible practices known as the 'Third Degree,'" the violation of the statute in "flagrant disregard of the procedure which Congress has commanded," was sufficient to require the exclusion of all evidence so obtained from the accused. As to this the Supreme Court said:

"* * * The record leaves no room for doubt that the questioning of petitioners took place while they were in the custody of the arresting officers and before any order of commitment was made. Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of the law."

This unambiguous language leaves us no alternative but to apply the same rule with the same result to the facts in the present case. That this new rule, as Mr. Justice Reed calls it in his dissent, introduces a far-reaching innovation in the established rules of evidence in criminal cases will hardly be questioned, for
57 heretofore the test of admissibility has been thought to be limited to the question—was the confession free and voluntary. Likewise, that its universal application in the Federal Courts will, in some cases—as it may in this—result a miscarriage of justice is obvious. But doubtless this contingency was fully considered by the Supreme Court, and the conclusion deliberately reached that this—in the cases in which it occurs—will prove a lesser evil than the perpetuation by court approval of a violation by police of statutes designed to protect the personal rights of the individual and preserve his immunity from abuse and from imprisonment except upon a judgment of his peers and the law of the land. In this view it becomes our duty to reverse the judgments and remand the cases to the District Court for new trials in accordance with the views expressed herein.

No. 8533 Reversed.

No. 8547 Reversed.

58 United States Court of Appeals for the District of Columbia

No. 8533—October Term, 1943

JAMES P. MITCHELL, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Columbia

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court for a new trial in accordance with the views expressed in the opinion of this Court.

PER CURIAM.

Dated October 25, 1943.

59 United States Court of Appeals for the District of Columbia

No. 8547—October Term, 1943

JAMES P. MITCHELL, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Columbia

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and

that this cause be, and it is hereby, remanded to the said District Court for a new trial in accordance with the views expressed in the opinion of this Court.

PER CURIAM.

Dated October 25, 1943.

60 In the United States Court of Appeals for the District of Columbia

Nos. 8533, 8547

JAMES P. MITCHELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

United States Court of Appeals for the District of Columbia. Filed Nov. 23, 1943. Joseph W. Stewart, Clerk.

Designation of record

The Clerk will please prepare a transcript on application to the Supreme Court of the United States for certiorari in the above-entitled causes including therein the following:

1. The printed records which appear in the form of an appendix to appellee's brief;
2. Opinion;
3. Judgments.

Stricken on authority of Mr. Jenning's of the Solicitor General's Office.

6. This designation;
7. Clerk's certificate.

CHARLES FAHY,
Solicitor General,
Attorney for Appellee.

Service of designation of record acknowledged this 23rd day of November, A. D. 1943.

JAMES J. LOUGHLIN,
Counsel for James P. Mitchell, Appellant.

61 United States Court of Appeals for the District of Columbia

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 60, both inclusive, constitute a true

copy of the appendix to the appellee's brief and the proceedings of the said Court of Appeals as designated by counsel for appellee in the case of James P. Mitchell, Appellant vs. United States of America, Appellee, Nos. 8533, 8547—October Term, 1943, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-fourth day of November A. D. 1943.

[SEAL] JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia.

62 Supreme Court of the United States

No. 514. October Term, 1943

Order allowing certiorari

Filed January 17, 1944

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

63 Supreme Court of the United States

No. 515. October Term, 1943

Order allowing certiorari

Filed January 17, 1944

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

64 Supreme Court of the United States

Nos. 514 & 515. October Term, 1943

Order granting leave to respondent to proceed in forma pauperis

January 17, 1944

On consideration of the motion of respondent for leave to proceed herein in forma pauperis,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

[Endorsement on cover:] File Nos. 48007, 48008. U. S. Court of Appeals, District of Columbia. Term No. 514. The United States of America, Petitioner vs. James P. Mitchell. Term No. 515. The United States of America, Petitioner vs. James P. Mitchell. Petition for writs of certiorari and exhibit thereto. Filed November 29, 1943. Term No. 514 O. T. 1943, 515 O. T. 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1944

INDEX

CITATIONS

862384—43——1

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 514–515

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES P. MITCHELL

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the United States, prays that writs of certiorari issue to review the judgments of the United States Court of Appeals for the District of Columbia, entered October 25, 1943 (R. 58, 59), reversing respondent's convictions of housebreaking and larceny and remanding the cases to the district court for new trials.

OPINION BELOW

The opinion of the court of appeals (R. 55–57) has not yet been reported.

JURISDICTION

The judgments of the court of appeals were entered on October 25, 1943 (R. 58, 59). The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

QUESTIONS PRESENTED

1. Whether the rule of *McNabb* v. *United States*, 318 U. S. 332, requires a holding that a confession made during detention and prior to arraignment is inadmissible in evidence even though at the time of confession the detention was not illegal, the confession was not given in response to interrogation, and the subsequent delay in arraignment bore no causative relation to the making of the confession.

2. Whether the rule of *McNabb* v. *United States* prevents the use in evidence of property discovered by police officers in a search made without a search warrant but with the defendant's consent given while in detention prior to arraignment.

STATEMENT

In each of two indictments, filed in the United States District Court for the District of Columbia, respondent was charged in separate counts with housebreaking and larceny (R. 3–4, 35–36). He was separately tried under each indictment, and in each case he was found guilty by a jury on both counts (R. 12, 14). In one case he was committed to the custody of the Attorney General for im-

prisonment of from one to three years (R. 14); and in the other case he was given a similar sentence of from one-and-a-half to four-and-a-half years, to run concurrently with the first sentence (R. 44–45). On appeal to the Court of Appeals for the District of Columbia, the judgments of conviction were reversed in a *per curiam* opinion (R. 55–57) relying exclusively upon this Court's decision in *McNabb* v. *United States*, 318 U. S. 332. The circumstances of respondent's arrest and conviction, in which the court below found a violation of the *McNabb* rule, may be thus summarized:

On the night of August 11–12, 1942, the home of Harry G. Meem in Washington had been broken into and various items of personal property, including a pair of cuff links, had been stolen therefrom (R. 20–21).[1] On October 12, 1942, Charles T. Williams, a police officer, found at A. Kahn, Inc., jewelers, a pair of cuff links answering the description of those stolen, which had been purchased by Kahn's on August 13, 1942, from a person giving the name and address of James Mitchell, 1427 *W* Street N.W. (R. 21). This clue led Williams at 2:00 P. M. on October 12th to respondent's home at 1427 *N* Street N.W., where he met and talked with respondent (R. 21–22, 23, 49, 52). Williams then went to Meem's home where the latter identified the cuff links (R. 22). Accompanied by another police officer,

[1] The housebreaking and theft at the Meem home were the charges of the two counts in the first indictment (R. 3–4).

Williams returned to respondent's home at about 7:00 P. M. the same day and asked him to go with them to the precinct station for questioning. Both officers testified that they did not arrest respondent; that he accompanied them without remonstrance; that they did not question him during the ride to the station in their automobile; that they did not then or at any time thereafter use force or make threats or hold out hope of reward or favor, or mistreat respondent in any way; and that upon arrival at the station they told him "that they knew what he had done and told him that he did not have to say anything, but that all they wanted to know was who had worked with him," whereupon he "freely admitted that he had broken into the home of Mr. and Mrs. Meem and admitted that he had taken the cuff links in question as well as the other property which was identified" (R. 18, 19, 22, 23, 49–51). At the same time he admitted having broken into and stolen various items of personal property from the home of Anthony Lucas (R. 50).[2] The entire confession was given at approximately 7:00 P. M., within a few minutes after arrival at the police station (R. 18, 22, 23, 50, 51). Respondent at the same time "told the officers that the goods which he stole were located in various parts of his home on N Street N.W.,

[2] The housebreaking and theft at the Lucas home were the charges of the two counts in the second indictment (R. 35–36).

and gave the officers express permission to go to his home and obtain all the property that was there" (R. 18–19, 22, 23, 50–51), telling them that "some of it was located in two trunks in the basement" (R. 50). Without a search warrant, but pursuant to respondent's expressed consent, the officers then went to his home and secured the stolen property which was introduced in evidence at the trials and there identified (R. 19, 20–21, 23, 49, 50).

Respondent was not taken before a committing magistrate the next morning, but was held at the police station under no charge other than for investigation until October 19th, and was arraigned before a committing magistrate on October 20th—a lapse of eight days (R. 18, 19, 24, 51). The reason for the delay in arraignment was that the officers had recovered from respondent's home property that had been stolen in more than thirty Washington housebreakings and respondent was cooperating with the police and the victims in identifying this property (R. 51).[3] From the beginning respondent "was very cooperative and told the police that he wanted to help them in investigating the various housebreakings in which he was involved, and * * * asked to be kept at the precinct station until the cases were cleared up" (R. 19). While in detention he "was not mistreated in any way but on the contrary

[3] Only the property stolen from the Meem and Lucas homes was, of course, introduced in evidence at the trials below.

was shown every possible courtesy and was on occasions visited by his mother and others" (R. 19).

Shortly before the first case was called for trial, respondent moved to suppress evidence in all the cases pending against him (R. 5–6, 18).[4] After a hearing at which respondent and Officer Williams testified (R. 18–19), the motion was denied by Justice McGuire (R. 7, 19). A similiar motion made in the second case was denied by Justice Laws on the basis of Justice McGuire's prior ruling (R. 40–41, 48). At the trials the evidence of guilt consisted principally of the testimony of the officers to respondent's oral confessions made on the early evening of October 12, 1942 (*supra*, p. 4), and of the property stolen from the Meem and Lucas homes, secured that evening from respondent's home with his consent (*supra*, p. 5), which was identified at the trials by the owners thereof (R. 20–21, 49). Motions were made to exclude the testimony as to the oral confessions, on the authority of the *McNabb* case (R. 22–23, 51–52). Before admitting the testimony in the first case Justice McGuire heard evidence and argument at length out of the presence of the jury, and at the conclusion thereof he remarked, and respondent's counsel agreed, "that the issue

[4] The housebreakings to which respondent confessed had resulted in a large number of indictments, only two of which are involved here.

drawn in the testimony on the motion was one of fact whether the defendant had, at any time, made any admissions to the officers which they affirmed and he denied" (R. 23). The motion was denied (R. 23).[5] The similar motion in the second case was likewise denied by Justice Laws, after a conference with counsel at the bench (R. 51). Respondent took the witness stand at the trials and denied having made the confessions or given consent to the search of his home and removal of the stolen property therefrom. He testified that he was beaten by the officers both in the automobile while en route to the station and thereafter at the station[6] (R. 23–24, 52–53). This evidence was controverted by the Government (R. 22, 25, 51, 53). Motions for directed verdicts were de-

[5] In view of the consensus as to the issue before the judge on the motion, the denial of the motion must be taken as a finding by the trial court that the confessions had been made. Assuming that they were made, there was no issue as to when they were made; for the testimony on behalf of the Government was uniform as to the circumstances under which they were made, and the defendant did not claim that they were made at any other time but, rather, that none had been made at all. The denial of the motion amounts, therefore, to a finding that the confessions were made shortly after 7 o'clock on the evening of October 12th. The court of appeals so assumed in stating the facts for the purpose of considering the application of the *McNabb* case (R. 56).

[6] Respondent testified "that he was beaten continuously from the time he arrived at the precinct station for about fifteen or eighteen hours when he went into what he described as a coma, being unconscious from that time on for a considerable period" (R. 24). However, he admitted on cross-

nied and respondent was convicted in both cases (R. 25, 53).

The court of appeals, reciting as a fact that "after appellant was arrested and brought from his home to the Police Station and interrogated by the officers, the confession obtained and his consent to the search given, he was continued under arrest for more than a week by the police without being brought before a magistrate, commissioner, or court" (R. 56), reversed the convictions on the authority of *McNabb* v. *United States*, 318 U. S. 332. It stated (R. 56) that it "was almost this identical situation which, the Supreme Court in *McNabb* v. *U. S.* said, makes a confession, voluntary or involuntary, inadmissible in evidence on the trial of the case." Although the opinion of the court of appeals is not explicit on the point, the failure to arraign promptly was

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examination "that about midnight of the night of his arrest the police officers took him to his home where they permitted him to feed his dog" (R. 53), and "that the next evening, that is, October 13, 1942, he was taken to Police Headquarters where he was photographed by a police photographer at which time he said nothing to the photographer or anyone else about his physical condition" (R. 24). The photograph was admitted in evidence in refutation of respondent's testimony (R. 25). In view of the finding by the trial court and the verdict of the jury, we have here, as was done in the *McNabb* case, "treated as facts only the testimony offered on behalf of the Government and so much of the [respondent's] evidence as is neither contradicted by nor inconsistent with that of the Government." *McNabb* v. *United States*, 318 U. S. 332, 338–339, footnote 5.

apparently also regarded as vitiating respondent's consent to the search of his premises and seizure of the stolen property, thereby rendering the latter inadmissible in evidence at the trials.

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred:

1. In holding that the facts of the instant case fall within the rule of *McNabb* v. *United States*, 318 U. S. 332;

2. In holding that the *McNabb* rule precludes the use of evidence procured by a search made pursuant to a defendant's consent given while in detention prior to arraignment;

3. In reversing the judgments of conviction and remanding the cases to the district court for new trials.

REASONS FOR GRANTING THE WRITS

1. As we understand the scope of the rule of the *McNabb* case, it requires that a confession, to be rendered inadmissible by the operation of the rule, must have been given during a period of unlawful detention and in response to interrogation. That this should be the rule was the view of the Advisory Committee appointed by this Court (Order of February 3, 1941, 312 U. S. 717) to assist in the preparation of federal rules of criminal procedure. Rule 5 (b) in the Prelimi-

nary Draft of Federal Rules of Criminal Procedure (May 1943) provided as follows:[7]

> No statement made by a defendant in response to interrogation by an officer or agent of the government shall be admissible in evidence against him if the interrogation occurs while the defendant is held in custody in violation of this rule [Rule 5 (a)].

The proposed rule as thus drafted was regarded by the Committee as resting upon considerations which were "in substance those set forth in the opinion of the court in *McNabb* v. *United States*, although the proposed rule was adopted before the decision of that case" (Preliminary Draft, p. 13). In explanation of the scope of the proposed rule, the Committee stated (Preliminary Draft, pp. 13–14):

> It is to be noted that the proposed rule does not exclude voluntary statements made in response to interrogation by officers unless at the time the statement is made the detention is unlawful under Subdivision (a); interrogation during the permissible period of detention is not prohibited. Even if the detention is unlawful, moreover, voluntary statements made otherwise than in answer to interrogation by government agents are not rendered inadmissible.

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[7] We are informed that the Committee has now deleted Rule 5 (b) from the proposed rules, owing among other things to objections to an attempt to crystallize a rule of evidence in such a codification.

The facts of the *McNabb* case and the language of the opinion are thoroughly consistent with this understanding of the scope of the *McNabb* rule. The court of appeals in the instant case relied expressly upon the following passage in the opinion (318 U. S. at 345):

> The record leaves no room for doubt that the questioning of the petitioners took place while they were in the custody of the arresting officers and before any order of commitment was made. Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law.

This statement, however, read in its context, clearly relates to the use of confessions secured by interrogation during a period of illegal detention. In the *McNabb* case the testimony of the arresting officers showed clearly that the illegal detention was for the purpose, and continued throughout the process, of the interrogation of the defendants. Three of the defendants were taken into custody between one and two o'clock on a Thursday morning, and were held incommunicado in a barren cell for fourteen hours before the questioning even began. Another was handed over by the local police to the Federal authorities about nine or ten o'clock on Thursday morning, and still another voluntarily surrendered

about eight or nine o'clock Friday morning. All were questioned, both separately and together, for long and short periods, at various times of the day and night, always before at least six officers. The questioning continued until around two o'clock Saturday morning.[8] In stating its conclusion the Court said: "We hold only that a decent regard for the duty of courts as agencies of justice and custodians of liberty forbids that men should be convicted *upon evidence secured under the circumstances revealed here*" (318 U. S. at 347; italics supplied). The opinion is replete with language emphasizing the likelihood of a causative relation between the interrogation during unlawful detention and the confession.[9] The decision establishes, we believe, a rule whereby unlawful detention is presumed to bear a causative relation to confessions given during such de-

[8] The record did not disclose when the defendants were arraigned.

[9] See, for examples, the following quotations:

"The circumstances in which the statement admitted in evidence against the petitioners were secured reveal a plain disregard of the duty enjoined by Congress upon federal law officers" (p. 344).

"Benjamin's confession was secured by detaining him unlawfully and questioning him continuously for five or six hours" (p. 345).

See also the statement relied upon by the court of appeals in its opinion (*supra*, p. 11).

It is clear, we believe, that all of these statements lay emphasis, implicitly if not expressly, upon the causative relation of the illegality to the confessions.

tention in response to interrogation by Government officers. We believe that it goes no further.

In the present case, on the other hand, the confessions held inadmissible on the authority of the *McNabb* decision were not given in response to interrogation during a period of unlawful detention.[10] There had as yet been no unnecessary delay in arraignment at the time the confessions were given.[11] They were given almost immediately after respondent's arrest.[12] An arraignment early on the following morning of October

[10] According to the police officers, the only interrogation, if it was such, consisted in the fact that they told respondent "that they knew what he had done and told him that he did not have to say anything, but that all they wanted to know was who had worked with him" (R. 22).

[11] In its opinion (R. 56) the court commented that the delay in arraignment was "in the very teeth of the statute which commands arraignment 'immediately and without delay'," citing D. C. Code (1940), Title 4, Sec. 140. This section is clearly inapplicable, since it applies only to arrests for offenses (including misdemeanors and breaches of the peace) committed "in the presence of such member [of the police force], or within his view." The officers, in arresting respondent here, were not acting under this section, but presumably under the general police power to arrest an individual without a warrant on reasonable ground to believe that that individual has committed a felony. See *Maghan v. Jerome*, 88 F. (2d) 1001, 1002 (App. D. C.). The applicable statute requiring prompt arraignment was 18 U. S. C. 595 (one of the statutes relied upon by this Court in its decision in the *McNabb* case), which contains no specific language regarding the time of arraignment.

[12] Although for the purposes of this petition we assume, as did the court below (R. 56) that respondent was arrested, there is even doubt whether this was technically the case. The police officers testified that respondent, when he accompanied them, "was not under arrest" (R. 18).

13th would have constituted, we believe, a sufficiently prompt arraignment.[13] Admittedly the subsequent detention of respondent for a period of seven days without arraignment was unlawful. But it was not during that period that the confessions were given. The subsequent delay in arraignment could not possibly have had a causative relation to the confessions; and therefore all basis for a presumption of such a relationship as applied to the facts of the *McNabb* case, where the confessions were given both in response to interrogation and during the period of unlawful detention, is lacking here.

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[13] We do not believe that under either 18 U. S. C. 595 or the provision of the D. C. Code cited by the court below the duty of an arresting officer requires that he attempt to reach a committing magistrate at his home, or outside of office hours. See *Bullock* v. *United States*, 122 F. (2d) 213, 215 (App. D. C.), certiorari denied *sub nom. Bullock* v. *Rives*, 317 U. S. 627: "Appellant's detention for more than 36 hours without hearing or commitment, which would ordinarily have been unlawful, was perhaps excused by the fact that it occurred on Saturday night and Sunday;" *United States* v. *Ebbs*, 10 F. (2d) 369, 375 (W. D. N. C.): "Nothing, however, but obvious necessity will authorize an officer to lodge a prisoner in jail before an examination and regular commitment by a magistrate. This course may be adopted if the arrest is made in or near night, whereby he cannot attend the magistrate;" *Janus* v. *United States*, 38 F. (2d) 431 (C. C. A. 9), holding on particular facts that detention without a warrant "until office hours" of the magistrate on the day following the arrest was proper. None of these cases was decided under a statutory command for arraignment "immediately, and without delay"; but such an absolute command, even had it been applicable, must presumably be construed reasonably.

2. There is likewise nothing in the holding in the *McNabb* case, or in the language of the opinion, to indicate that the rule renders inadmissible evidence procured by a search made pursuant to a defendant's consent given while in detention prior to arraignment, even under the circumstances of that case. The emphasis placed in the opinion there upon the fact of interrogation would seem to imply that the rule does not necessarily have such an application. But even if the same *desiderata* that are applicable to confessions are to be deemed likewise applicable to consent to search and seizure, that result should, we submit, be made explicit by this Court, rather than left doubtful on the basis of the decision of the court below.

3. The questions presented are of general public importance, and involve a situation in which, we submit, the court of appeals has misconstrued a decision of this Court. Apart from the fact that, as we believe, the decision below was wrong and should be reversed by this Court, the confusion which the decision engenders as to the proper scope of the *McNabb* rule cannot fail to impair substantially the effective and orderly processes of law enforcement. The decision is susceptible of interpretation either as a holding that a confession or other evidence lawfully obtained may be invalidated by subsequent unlawful action on the part of the arresting officers, or as a holding that no confession or other evidence is admissible if

secured during the interval between arrest and arraignment, however short and within the bounds of legality that interval may be. On the first hypothesis, the decision excludes trustworthy evidence for no other purpose than to discipline police officers for unlawful conduct altogether unrelated to the securing of such evidence. On the second hypothesis it excludes trustworthy evidence in the absence of any unlawful conduct whatever. We submit that in either event the result unnecessarily prejudices the public interest in the proof of crime by trustworthy evidence lawfully procured. The proper scope of the *McNabb* rule, as applied to facts such as those involved in this case, is a question of primary importance in the administration of criminal law in the federal courts, and the extension of the rule proposed by the court below is of such doubtful validity and far-reaching consequence as, we submit, to require consideration by this Court."

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[14] The following additional cases also show the extreme lengths to which trial judges are carrying the *McNabb* rule:

United States v. *Wilburn*, Nos. 71877, 72342, United States District Court, District of Columbia. Wilburn, a 17-year-old Negro, had attacked one girl at about 7:00 A. M. on March 17, 1943, and another girl at about 1:00 A. M. on March 18, 1943. He was arrested at about 2:00 A. M. on the night of March 18, and made a verbal confession of the second attack at about 4:00 A. M. At about 5:00 A. M., in the presence of the complaining witness, he reenacted the crime. He signed a written confession of both crimes at about 11:30 A. M. on March 18, and was arraigned before the juvenile court at 3:00 P. M. on the same day. In the first case Justice Letts, on July 2, 1943, granted a new trial because of the

CONCLUSION

For the reasons stated it is respectfully submited that this petition for writs of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

NOVEMBER 29, 1943.

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admission in evidence of the written confession. In the second, Justice Pine, on November 15, 1943, directed a verdict of acquittal, ruling that the Government could not even introduce testimony to the fact of the oral confession at 4:00 A. M. or of the reenactment of the crime about 5:00 A. M. In doing so he remarked that it probably meant "a miscarriage of justice."

United States v. *Neely*, No. 72187, United States District Court, District of Columbia. Neely was arrested about 5:00 P. M. on Saturday, May 9, and was taken before a coroner's inquest at 11:50 A. M. on Monday, May 11. He had made a statement about 8:00 P. M. Saturday evening. Justice Pine, on November 18, 1943, ruled that such statement was inadmissible even for the purpose of contradicting the defendant on his cross-examination.

United States v. *Basil Fedorka* (S. D. N. Y.). Fedorka was apprehended at 7:00 A. M. on May 14, 1943, and was arraigned at 1:00 P. M. the same day. An attempt was made earlier to reach the United States Commissioner, who was absent, and his absence was the only reason for the delay in arraignment until 1:00 P. M. On July 19, 1943, Judge Caffey excluded both the written statement and the oral admissions made between arrest and arraignment.

United States v. *Stokely Delmar Hart* (N. D. Ill.). Hart was apprehended at 7:00 A. M. on Sunday, September 20, 1942, and gave a signed statement at 5:00 P. M. that day. He was arraigned the next morning. At the trial in May 1943, Judge Igoe, in holding the statement inadmissible, ruled that it made no difference that Hart in fact had been arraigned as soon as a United States Commissioner was available at his office.

U. S. GOVERNMENT PRINTING OFFICE 1943

INDEX

CITATIONS

578032—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1943

Nos. 514–515

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES P. MITCHELL

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 55–57) has not yet been reported.

JURISDICTION

The judgments of the court of appeals reversing respondent's convictions of housebreaking and larceny and remanding the cases to the district court for new trials were entered on October 25, 1943 (R. 58, 59). The petition for writs of certiorari was filed November 29, 1943, and granted January 17, 1944 (R. 48). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of

the Criminal Appeals Rules promulgated by this Court May 7, 1934.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Fourth Amendment provides in part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *.

Section 1 of the Act of August 18, 1894, c. 301, 28 Stat. 416, as amended (18 U. S. C. 595), provides:

> It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint, and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, and no mileage shall be allowed any officer violating the provisions hereof.

D. C. Code, Title 4, sec. 140:[1]

> The several members of the police force shall have power and authority to immediately arrest, without warrant, and to take

[1] This section, though cited by the Court of Appeals, is in our view inapplicable, for the reasons stated *infra*, p. 13, n. 18.

into custody any person who shall commit, or threaten or attempt to commit, in the presence of such member, or within his view, any breach of the peace or offense directly prohibited by Act of Congress, or by any law or ordinance in force in the District, but such member of the police force shall immediately, and without delay, upon such arrest, convey in person such offender before the proper court, that he may be dealt with according to law. (R. S., D. C., § 397.)

QUESTIONS PRESENTED

1. Whether the rule of *McNabb* v. *United States*, 318 U. S. 332, requires a holding that a confession made during detention and prior to hearing before a committing magistrate is inadmissible in evidence even though at the time of confession the detention was not illegal, the confession was not given in response to interrogation, and the subsequent delay in going before a committing officer bore no causative relation to the making of the confession.

2. Whether the rule of *McNabb* v. *United States* prevents the use in evidence of property discovered by police officers in a search made without a search warrant but with the defendant's consent given while in detention prior to being taken before a committing magistrate.

STATEMENT

In each of two indictments, filed in the United States District Court for the District of Colum-

bia, respondent was charged in separate counts with housebreaking and larceny (R. 1–2, 26–27). He was separately tried under each indictment, and in each case he was found guilty by a jury on both counts (R. 9, 33). In one case he was committed to the custody of the Attorney General for imprisonment of from one to three years (R. 11–12); and in the other case he was given a similar sentence of from one and a half to four and a half years, to run concurrently with the first sentence (R. 35). On appeal to the Court of Appeals for the District of Columbia, the judgments of conviction were reversed in a *per curiam* opinion (R. 44–45) relying exclusively upon this Court's decision in *McNabb* v. *United States,* 318 U. S. 332. The circumstances of respondent's arrest and conviction, in which the court below found a violation of the *McNabb* rule, may be thus summarized:

On the night of August 11–12, 1942, the home of Harry G. Meem in Washington had been broken into and various items of personal property, including a pair of cuff links, had been stolen therefrom (R. 17).[2] On October 12, 1942, Charles T. Williams, a police officer, found at A. Kahn, Inc., jewelers, a pair of cuff links answering the description of those stolen, which had been purchased by Kahn's on August 13, 1942,

[2] The housebreaking and theft at the Meem home were the charges of the two counts in the first indictment (R. 1–2).

from a person giving the name and address of James Mitchell, 1427 *W* Street NW. (R. 17–18). This clue led Williams at 2:00 p. m. on October 12th to respondent's home at 1427 *N* Street NW., where he met and talked with respondent. (R. 18, 39, 41.) Williams then went to Meem's home where the latter identified the cuff links (R. 18). Accompanied by another police officer, Williams returned to respondent's home at about 7:00 p. m. the same day and asked him to go with him them to the precinct station for questioning. Both officers testified that they did not arrest respondent; that he accompanied them without remonstrance; that they did not question him during the ride to the station in their automobile; that they did not then or at any time thereafter use force or make threats or hold out hope of reward or favor, or mistreat respondent in any way; and that upon arrival at the station they told him "that they knew what he had done and told him that he did not have to say anything, but that all they wanted to know was who had worked with him," whereupon he "freely admitted that he had broken into the home of Mr. and Mrs. Meem and admitted that he had taken the cuff links in question as well as the other property which was identified". (R. 15, 18, 19, 39–41.) At the same time he admitted having broken into and stolen various items of personal property from the home of Anthony Lucas

(R. 40).[3] The entire confession was given at approximately 7:00 p. m., within a few minutes after arrival at the police station (R. 15, 18, 19, 39–41). Respondent at the same time "told the officers that the goods which he stole were located in various parts of his home on N Street NW., and gave the officers express permission to go to his home and obtain all the property that was there" (R. 15, 18, 19, 40), telling them that "some of it was located in two trunks in the basement" (R. 40). Without a search warrant, but pursuant to respondent's expressed consent, the officers then went to his home and secured the stolen property (R. 15, 40) which was introduced in evidence at the trials and there identified (R. 17, 19, 39, 40).

Respondent was not taken before a committing magistrate the next morning, but was held at the police station under no charge other than for investigation until October 19th, and was arraigned before a committing magistrate on October 20th—a lapse of eight days (R. 15, 19, 41). The reason for the delay in arraignment was that the officers had recovered from respondent's home property that had been stolen in more than thirty Washington housebreakings and respondent was cooperating with the police and the victims in iden-

[3] The housebreaking and theft at the Lucas home were the charges of the two counts in the second indictment (R. 26–27).

tifying this property (R. 41; see also R. 15).[4] From the beginning respondent "was very cooperative and told the police that he wanted to help them in investigating the various housebreakings in which he was involved, and * * * asked to be kept at the precinct station until the cases were cleared up" (R. 15). While in detention he "was not mistreated in any way, but on the contrary was shown every possible courtesy and was on occasions visited by his mother and others" (R. 15–16).

Shortly before the first case was called for trial, respondent moved to suppress evidence in all the cases pending against him (R. 3–4, 14–15).[5] After a hearing at which respondent and Officer Williams testified (R. 15), the motion was denied by Justice McGuire (R. 4–5, 16). A similar motion made in the second case was denied by Justice Laws on the basis of Justice McGuire's prior ruling (R. 31, 39). At each trial the evidence of guilt consisted principally of the testimony of the officers to respondent's oral confessions made on the early evening of October 12, 1942 (*supra*, p. 5), and of the property stolen from the Meem and Lucas homes, secured that evening from respondent's home with his consent (*supra*, p. 6),

[4] Only the property stolen from the Meem and Lucas homes was, of course, introduced in evidence at the trials below.

[5] The housebreakings to which respondent confessed had resulted in a large number of indictments, only two of which are involved here.

which was identified at the trials by the owners thereof (R. 17, 39). Motions were made to exclude the testimony as to the oral confessions, on the authority of the *McNabb* case (R. 18–19, 41). Before admitting the testimony in the first case Justice McGuire heard evidence and argument at length out of the presence of the jury, and at the conclusion thereof he remarked, and respondent's counsel agreed, "that the issue drawn in the testimony on the motion was one of fact whether the defendant had, at any time, made any admissions to the officers which they affirmed and he denied" (R. 18–19). The motion was denied (R. 19).* The similar motion in the second case was likewise denied by Justice Laws, after a conference with counsel at the bench (R. 41). Respondent took the witness stand at the trials and denied having made the confessions or given consent to the search of his home and removal of the stolen property therefrom. He testified that he was

* In view of the consensus as to the issue before the judge on the motion, the denial of the motion must be taken as a finding by the trial court that the confessions had been made. Assuming that they were made, there was no issue as to when they were made; for the testimony on behalf of the Government was uniform as to the circumstances under which they were made, and the defendant did not claim that they were made at any other time but, rather, that none had been made at all. The denial of the motion amounts, therefore, to a finding that the confessions were made shortly after 7 o'clock on the evening of October 12th. The court of appeals so assumed in stating the facts for the purpose of considering the application of the *McNabb* case (R. 44).

beaten by the officers both in the automobile while en route to the station and thereafter at the station.[7] (R. 19–20, 42.) This evidence was controverted by the Government (R. 18, 20, 40–41, 42–43). Motions for directed verdicts were denied and respondent was convicted in both cases (R. 20–21, 43).

The court of appeals, reciting as a fact that "after appellant was arrested and brought from his home to the Police Station and interrogated by the officers, the confession obtained and his consent to the search given, he was continued under arrest for more than a week by the police without being brought before a magistrate, commissioner, or court" (R. 44), reversed the con-

[7] Respondent testified "that he was beaten continuously from the time he arrived at the precinct station for about fifteen or eighteen hours when he went into what he described as a coma, being unconscious from that time on for a considerable period" (R. 20). However, he admitted on cross-examination "that about midnight of the night of his arrest the police officers took him back to his home where they permitted him to feed his dog" (R. 42), and "that the next evening, that is, October 13, 1942, he was taken to Police Headquarters where he was photographed by a police photographer at which time he said nothing to the photographer or anyone else about his physical condition" (R. 20). The photograph was admitted in evidence in refutation of respondent's testimony, over his objection (R. 20). In view of the finding by the trial court and the verdict of the jury, we have, as was done in the *McNabb* case, "treated as facts only the testimony offered on behalf of the Government and so much of the [respondent's] evidence as is neither contradicted by nor inconsistent with that of the Government." *McNabb* v. *United States*, 318 U. S. 332, 338–339, footnote 5.

victions on the authority of *McNabb* v. *United States*, 318 U. S. 332. It stated (R. 44) that it "was almost this identical situation which, the Supreme Court in *McNabb* v. *U. S.* said, makes a confession, voluntary or involuntary, inadmissible in evidence on the trial of the case." Although the opinion of the court of appeals is not explicit on the point, the failure to arraign promptly was apparently also regarded as vitiating respondent's consent to the search of his premises and seizure of the stolen property, thereby rendering the latter inadmissible in evidence at the trials.

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred:

1. In holding that the facts of the instant case fall within the rule of *McNabb* v. *United States*, 318 U. S. 332;

2. In holding that the *McNabb* rule precludes the use of evidence procured by a search made pursuant to a defendant's consent given while in detention prior to arraignment;

3. In reversing the judgments of conviction and remanding the cases to the district court for new trials.

SUMMARY OF ARGUMENT

1. As the confession in the present case was given shortly after respondent was apprehended, it was not the product of the unlawful detention which followed. In our view, *McNabb* v. *United*

States, 318 U. S. 332, does not warrant the exclusion of such a confession at the respondent's trial. This view is supported by the reasoning in the *McNabb* case itself. That case is based on a principle similar to that which calls for the exclusion from evidence of property taken in an unlawful search and seizure. In such cases the fact that a lawful search is followed by unlawful conduct on the part of the officers does not render inadmissible property taken prior to the unlawful conduct. *McGuire* v. *United States,* 273 U. S. 95. Likewise, where evidence is secured subsequent to unlawful conduct, as for example, illegal wire tapping, the test of admissibility of the evidence is whether there was a "causal connection" between its procurement and the information which had previously been illegally obtained. *Nardone* v. *United States,* 308 U. S. 338, 341.

To broaden the rule of exclusion to cover evidence which was not the fruit of unlawful conduct would be to perform a legislative function in devising penalties for infractions of statutory duties. The test of causal relationship, on the other hand, is one entirely appropriate to the courts' function in passing on the admissibility of evidence which, but for the proscribed conduct, would presumably not have been available. Extension of the rule of exclusion would transfer the doctrine of trespass *ab initio* from the field of civil liability, where at best it is of dubious

authority, to a field where the civil liability of the trespasser is not directly in issue.

The mere fact that a confession is given while the person is in custody does not render it inadmissible, as the *McNabb* decision recognizes. If further restrictions on the questioning of persons in custody are to be established, it would doubtless be necessary to provide some administrative machinery for the taking of statements; this is a problem with which legislative action, in the broad sense, can most appropriately deal.

Our view of the scope of the *McNabb* decision is the same as that taken by the Advisory Committee appointed by this Court to assist in the preparation of federal rules of criminal procedure.

2. The stolen property was admissible in evidence. The consent to the search of respondent's premises was, as the courts below found, voluntarily given shortly after he was taken into custody. The *McNabb* decision did not deal with the effect of consent to a search. If that decision has application to that field, its scope there is at least as limited as with respect to confessions. The reasons which justify the admission of the confession are equally pertinent as to seized property. It is therefore unnecessary to consider to what extent the standards governing a search for stolen property may differ from those governing a search merely to secure incriminating evidence. *United States* v. *Lefkowitz,* 285 U. S. 452, 465–466.

ARGUMENT

I

THE CONFESSION WAS ADMISSIBLE IN EVIDENCE

In *McNabb* v. *United States*, 318 U. S. 332, this Court held inadmissible confessions which were the product of unlawful detention of the accused. It is our understanding that neither the decision itself nor the reasoning on which it rests goes further and would require exclusion of a confession which was not so produced. If our understanding is right, the decision below cannot stand.

In the present case the confessions held inadmissible on the authority of the *McNabb* decision were not given during a period of unlawful detention. There had been no unnecessary delay in arraignment at the time the confessions were given.[8] They were given almost immediately

[8] In its opinion (R. 44) the court commented that the delay in arraignment was "in the very teeth of the statute which commands arraignment 'immediately and without delay'," citing D. C. Code (1940), Title 4, Sec. 140. This section is clearly inapplicable, since it applies only to arrests for offenses (including misdemeanors and breaches of the peace) committed "in the presence of such member [of the police force], or within his view." The officers, in arresting respondent here, were not acting under this section, but presumably under the general police power to arrest an individual without a warrant on reasonable ground to believe that that individual has committed a felony. See *Maghan* v. *Jerome*, 88 F. (2d) 1001, 1002 (App. D. C.), holding that the above-cited section of the District of Columbia Code does not define the power to arrest for felonies; that power per-

after respondent's arrest.[9] An arraignment early on the following morning of October 13th would have constituted, we believe, a sufficiently prompt arraignment, though it is not necessary to decide that question here.[10] Admittedly the subsequent detention of respondent for a period of seven days without arraignment was unlawful. But it was not during that period that the confessions were given. The subsequent delay in arraignment could not possibly have had a causative relation to the confessions; and therefore all basis for a presumption of such a relationship as applied to the facts of the *McNabb* case, where the confessions were given in response to interrogation during the period of unlawful detention, is lacking here.

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sists as at common law. See also, to the same effect, *Shettel* v. *United States*, 113 F. (2d) 34, 35 (App. D. C.). Housebreaking is a felony in the District of Columbia. D. C. Code, Title 22, Sec. 1801. The applicable statute requiring prompt arraignment is 18 U. S. C. 595 (one of the statutes relied upon by this Court in its decision in the *McNabb* case), which contains no specific language regarding the time of arraignment.

[9] Although for the purposes of this petition we assume, as did the court below (R. 44), that respondent was arrested, there is even doubt whether this was technically the case. The police officers testified that respondent, when he accompanied them, "was not under arrest" (R. 15).

[10] We do not believe that under either 18 U. S. C. 595 or the provision of the D. C. Code cited by the court below the duty of an arresting officer requires that he attempt to reach a committing magistrate at his home, or outside of office hours. See *Bullock* v. *United States*, 122 F. (2d) 213, 215 (App. D. C.), certiorari denied, sub nom. *Bullock* v. *Hines*, [illegible]: "Appellant's detention for more than 36 hours

That the *McNabb* case requires the exclusion only of confessions which are the product of an unlawful period of detention was the position taken by the Government in *Stephan* v. *United States,* No. 792, 1942 Term, in which this Court denied certiorari (318 U. S. 781; 319 U. S. 423, 424). In opposing the petition for certiorari in that case, the Government invited the Court's attention to the fact that the petitioner's confession, which had been admitted in evidence against him, was signed at 1:30 in the morning of April

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without hearing or commitment, which would ordinarily have been unlawful, was perhaps excused by the fact that it occurred on Saturday night and Sunday"; *United States* v. *Ebbs*, 10 Fed. 369, 375 (W. D. N. C.): "Nothing, however, but obvious necessity will authorize an officer to lodge a prisoner in jail before an examination and regular written commitment by a magistrate. This course may be adopted if the arrest is made in or near night, whereby he cannot attend the magistrate"; *Janus* v. *United States*, 38 F. (2d) 431 (C. C. A. 9), holding on particular facts that detention without a warrant "until office hours" of the magistrate on the day following the arrest was proper. None of these cases was decided under a statutory command for arraignment "immediately, and without delay"; but such an absolute command, even had it been applicable, must presumably be construed reasonably.

The proposed Federal Rules of Criminal Procedure use the standard "without unreasonable delay." Preliminary Draft and Second Preliminary Draft, Rule 5 (a). The Uniform Arrest Act (Sec. 11) provides: "If not otherwise released, every person arrested shall be brought before a magistrate without unreasonable delay, and in any event he shall, if possible, be so brought within twenty-four hours of arrest, Sundays and holidays excluded, * * *." See Warner, *The Uniform Arrest Act*, 28 Va. L. Rev. 315, 347 (1942).

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20, 1942, one and one-half hours after Government agents asked him to accompany them to their office. Of this confession the Government said, in language that is equally applicable to the oral admissions of the respondent in the present case (Br. in Opp. No. 792, 1942 Term, pp. 26–27, n. 13):

> So far as acknowledgment of facts could ever occur simultaneously with apprehension, it happened here, and in view of the spontaneity of petitioner's admission, we do not believe that any of the problems presented by *McNabb* v. *United States* are involved here.

In several cases district courts have directed acquittals under the *McNabb* decision where the defendants have freely and promptly admitted their guilt on apprehension, but where the defendants could not be immediately arraigned. In these cases, though in the judgment of the Government the decisions were erroneous, no appeal was available.[11]

[11] The cases, unreported, are described in our petition for certiorari in the present case, pp. 16–17, n. 14. Compare the following decisions in which the *McNabb* case was applied: *Haupt* v. *United States*, 136 F. (2d) 661 (C. C. A. 7), conviction of six defendants for treason reversed and new trial ordered; *Runnels* v. *United States*, 138 F. (2d) 346 (C. C. A. 9), conviction for murder, reversed; *Gros* v. *United States*, 136 F. (2d) 878 (C. C. A. 9), conviction for violation of the Foreign Agents Registration Act and for conspiracy unlawfully to disclose to the German Reich information affecting the national defense, reversed.

Our view of the *McNabb* case, which, as has been stated, was advanced in the *Stephan* case in this Court, is supported by the language of the opinion, by the reasoning which underlies it, and by the view which thoughtful commentators have taken with respect to it.

In the *McNabb* case the testimony of the arresting officers showed clearly that the illegal detention continued throughout the process of the interrogation of the defendants. Three of the defendants were taken into custody between one and two o'clock on a Thursday morning, and were held incommunicado in a barren cell for fourteen hours before the questioning ever began. Another was handed over by the local police to the Federal authorities about nine or ten o'clock on Thursday morning, and still another voluntarily surrendered about eight or nine o'clock Friday morning. All were questioned, both separately and together, for long and short periods, at various times of the day and night, always before at least six officers. The questioning continued until around two o'clock Saturday morning.[12] In stating its conclusion the Court said: "We hold only that a decent regard for the duty of courts as agencies of justice and custodians of liberty forbids that men should be convicted *upon*

[12] The record did not disclose when the defendants were arraigned.

evidence secured under the circumstances revealed here" (318 U. S. at 347; italics supplied). The opinion is replete with language emphasizing the likelihood of a causative relation between the interrogation during unlawful detention and the confession.[13] The decision rests, we believe, upon a causative relation of the confessions to the illegal detention and to interrogation by Government officers during such detention. We believe that it goes no further.

The basis for the *McNabb* ruling is lacking here. That decision proceeded upon grounds which have led the courts to exclude evidence obtained in violation of the constitutional guarantee against unlawful searches and seizures. It is settled that, although the constitutional guarantee does not extend in terms to the exclusion of evidence, the courts will provide an effective sanction when they are asked to admit evidence secured in violation of Amendment IV of the

[13] See, for examples, the following quotations, in addition to that in the text:

"The circumstances in which the statement admitted in evidence against the petitioners were secured reveal a plain disregard of the duty enjoined by Congress upon federal law officers" (p. 344).

"Bejamin's confession was secured by detaining him unlawfully and questioning him continuously for five or six hours" (p. 345).

See also the statement relied upon by the court of appeals in its opinion (R. 45).

It is clear, we believe, that all of these statements lay emphasis, implicitly if not expressly, upon the causative relation of the illegality to the confessions.

Constitution. See, *e. g.*, *Boyd* v. *United States*, 116 U. S. 616; *Weeks* v. *United States*, 232 U. S. 383; *Gouled* v. *United States*, 255 U. S. 298; *Agnello* v. *United States*, 269 U. S. 20; *Grau* v. *United States*, 287 U. S. 124 (all cited in the *McNabb* case, 318 U. S. at 339–340). While no constitutional issue is presented here, the analogy to the foregoing cases is plain. It therefore becomes particularly relevant to enquire into the result which obtains under the searches and seizures clause in a situation comparable to that here presented. Such a situation was dealt with in *McGuire* v. *United States*, 273 U. S. 95. There revenue agents, acting under a search warrant, discovered several gallons of intoxicating liquor which they seized and which, except for two quarts, they destroyed "without court order or other legal authority." The liquor retained was received in evidence over objection. This Court, while recognizing that the destruction of the liquor was "an illegal and oppressive act," nevertheless upheld the admissibility of that portion of the liquor as to which there had been no excess of authority. The Court said (pp. 99–100): "The seizure of the liquor received in evidence was in fact distinct from the destruction of the rest. Its validity so far as the government is concerned should be equally distinct." Later, in *United States* v. *Lee*, 274 U. S. 559, 563, the Court said, citing the *McGuire* case, "A later trespass by the officers, if any, did not render inadmissible

in evidence knowledge legally obtained." Thus it has been held that a search which exceeds in scope that authorized by the warrant does not require the exclusion of evidence secured in the lawful portion of the search. *Rising Sun Brewing Co.* v. *United States,* 55 F. (2d) 827, 828 (C. C. A. 3); *United States* v. *Tot,* 131 F. (2d) 261, 264 (C. C. A. 3), certiorari denied on this question, 317 U. S. 623, reversed on other grounds, 319 U. S. 463.

A cognate problem is presented where it is sought to exclude evidence secured after, instead of before, unlawful conduct on the part of officers. The unlawful conduct may consist in illegal wire-tapping, for example, or an illegal search and seizure. In such cases the test of admissibility of the subsequently procured evidence is whether there was a "causal connection" between its procurement and the information which had been illegally obtained. *Nardone* v. *United States,* 308 U. S. 338; see also *Silverthorne* v. *United States,* 251 U. S. 385, 392.

A broadening of the rule of exclusion would rest upon one of two grounds, each of which, it is submitted, is unsound. In the first place, it might be suggested that a broader rule of exclusion would be a more effective sanction for the statutory direction of prompt hearing. But this argument proves too much. The problem for the courts is not to devise the most effective sanction for the statute. A still more effective sanction

would be the conferring of total immunity from prosecution upon one who was the victim of unlawful conduct on the part of arresting officers; but of course no such result has been contemplated. The function of the court and jury in trying a criminal case is primarily to arrive at the truth of the criminal charges. That function does not, indeed, relieve a court of the responsibility of keeping out of the case matters which, but for official conduct prohibited by law, would not be available. To exclude more would be at once to usurp the function of the legislature in devising penalties for infractions of statutory duties, and to obscure the function of the court in trying the truth of the charges against the accused. From another point of view, it would be to transfer the rule of trespass *ab initio*, dubious enough in the field of civil liability,[14] to a collateral field

[14] See Bohlen and Shulman, *Effect of Subsequent Misconduct Upon a Lawful Arrest*, 28 Col. L. Rev. 841, 858: "The whole doctrine of trespass *ab initio* is discredited even in the field in which it had its origin. * * * It may be doubted whether a prisoner, whose detention has been prolonged by an unnecessary delay in bringing him before a court for hearing, is not sufficiently compensated by permitting him to recover for so much of his subsequent detention as is unnecessarily caused by the officer's delay"; *Restatement of the Law of Torts*, sec. 136: "If the actor, having obtained the custody of another by a privileged arrest, * * * (c) fails to use due diligence to take the other promptly before a proper court, or to give the other promptly into the custody of a third person authorized to take the custody of him, * * * the actor's misconduct makes him liable to the other only for such harm as is caused thereby and does not

where the liability of the trespasser is not directly in issue. That the rule should not be so transferred was expressly decided in the *McGuire* case, *supra*.

In the second place, it might be suggested that no incriminating statements may be received in evidence if they were given while the accused was under detention, whether lawful or not. Such a rule would, of course, overturn the long-established doctrine which was recognized and repeated in the *McNabb* case itself (p. 346): "The mere fact that a confession was made while in the custody of the police does not render it inadmissible." Moreover, changes in the conditions under which questioning may lawfully be carried on or statements lawfully received prior to trial are peculiarly matters for the constructive action of legislation or general rule-making. If a policy of affording additional protection in this regard for persons in custody were to be devised, it would doubtless be thought necessary to establish some form of machinery for the taking of statements from the persons held.[18] Congress has not expressed such a policy or established such machinery. The interest of courts in receiving relevant evidence is, therefore, not to be impaired by a

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make the actor liable for the arrest or for keeping the other in custody prior to the misconduct." See also Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 469.

[18] Compare the Scottish and the English procedure described in the Note to Rule 5 (b), Proposed Federal Rules of Criminal Procedure, [First] Preliminary Draft, pp. 14–15.

decisional rule of exclusion based merely on the fact that the confessor was in custody. As this Court said in *Nardone* v. *United States*, 308 U. S. 338, 340: "Any claim for the exclusion of evidence logically relevant in criminal prosecutions is heavily handicapped. It must be justified by an over-riding public policy expressed in the Constitution or the law of the land."

Our view that the *McNabb* case is applicable only to confessions secured as the result of unlawful detention is the view taken also by the Advisory Committee appointed by this Court to assist in the preparation of federal rules of criminal procedure. Rule 5 (b) in the Preliminary Draft of Federal Rules of Criminal Procedure (May 1943) provided as follows:[16]

> No statement made by a defendant in response to interrogation by an officer or agent of the government shall be admissible in evidence against him if the interrogation occurs while the defendant is held in custody in violation of this rule [Rule 5 (a)].[17]

The proposed rule as thus drafted was regarded by the Committee as resting upon considerations

[16] We are informed that the Committee has now deleted Rule 5 (b) from the proposed rules, owing, among other things, to objections to an attempt to crystallize a rule of evidence in such a codification. Cf. Second Preliminary Draft (Feb. 1944).

[17] Rule 5 (a) required the arresting officer "without unnecessary delay" to take the arrested person before the nearest available committing officer.

which were "in substance those set forth in the opinion of the court in *McNabb* v. *United States*, although the proposed rule was adopted before the decision of that case" (Preliminary Draft, p. 13). In explanation of the scope of the proposed rule, the Committee stated (Preliminary Draft, pp. 13–14):

> It is to be noted that the proposed rule does not exclude voluntary statements made in response to interrogation by officers unless at the time the statement is made the detention is unlawful under Subdivision (a); interrogation during the permissible period of detention is not prohibited. Even if the detention is unlawful, moreover, voluntary statements made otherwise than in answer to interrogation by government agents are not rendered inadmissible.

Trustworthy evidence is frequently given promptly after a person is taken into custody, whether through a desire to cooperate with the law-enforcement officers or through a desire to make a statement which is in part exculpatory and only in part incriminating. Where such evidence is not the fruit of official misconduct, it should not be withheld, we submit, from the triers of fact. Disciplinary measures with respect to subsequent misconduct should not take the form of a rule of evidence excluding statements which are themselves not the product of such misconduct.

II

THE STOLEN PROPERTY WAS ADMISSIBLE IN EVIDENCE

Respondent moved before each trial to suppress as "evidence" the stolen property recovered by the police at his rooming house (R. 3–4, 31–33). In accordance with the established procedure (see *Gouled* v. *United States*, 255 U. S. 298, 312), the court at the first trial held a hearing preliminary to the trial on the issue of the legality of the search (R. 14–16). Respondent denied that he had authorized the police to enter his premises (R. 15). The officers testified that respondent not only invited them to enter the boarding house but described to them the places where they would find the stolen property and then, after they had recovered it, respondent assisted them in identifying the homes of the victims of respondent's many larcenies (R. 15–16). The issue before the trial judge was whether respondent had authorized the police to enter his premises. That issue was resolved by the trial court in the Government's favor. It will be noted that, while respondent testified with respect to the consent to search his premises as with respect to his oral confession, that coercive measures were employed, he insisted that no consent was in fact given. Hence, to have found that consent was given under duress would have required the court to disbelieve half of respondent's testimony. It is evident that the court disbelieved the testimony as

a whole and accepted that of the Government's witnesses. The court of appeals found no occasion to disturb the finding but reversed solely on the supposed compulsion of the *McNabb* case.

In the *McNabb* case no issue was presented with respect to the effect of an unlawful detention upon consent given to the search of premises. Whether the principle of that decision applies in this field is therefore undetermined. If it be assumed that the principle does apply, the considerations advanced in the foregoing portion of our argument, in relation to the oral confession, are equally pertinent here, since the consent, like the oral confession, was given shortly after reaching the station and not during the period in which detention became illegal.

It may be added that, the *McNabb* decision aside, there is no principle which would exclude evidence obtained through a search of the defendant's premises made with his deliberate consent. A search is not unreasonable if the owner of the premises consents that it be made. This is but another way of saying that the immunity given by the Fourth Amendment may be waived (cf. *Adams* v. *United States ex rel. McCann*, 317 U. S. 269). If consent to a search is understandingly and deliberately given, proof obtained in the search is admissible on the owner's trial. *Cantrell* v. *United States*, 15 F. (2d) 953 (C. C. A.

5), certiorari denied, 273 U. S. 768; *DeLapp* v. *United States*, 53 F. (2d) 627 (C. C. A. 8), certiorari denied, 284 U. S. 684; *Marsh* v. *United States*, 29 F. (2d) 172 (C. C. A. 2); *United States* v. *Jankowski*, 28 F. (2d) 800 (C. C. A. 2); *Poetter* v. *United States*, 31 F. (2d) 438 (C. C. A. 9); *United States* v. *Bianco*, 96 F. (2d) 97 (C. C. A. 2); *Windsor* v. *United States*, 286 Fed. 51 (C. C. A. 6); *Stobble* v. *United States*, 91 F. (2d) 69 (C. C. A. 7); *Gatterdam* v. *United States*, 5 F. (2d) 673 (C. C. A. 6); *Giacolone* v. *United States*, 13 F. (2d) 110 (C. C. A. 9); *Waxman* v. *United States*, 12 F. (2d) 775 (C. C. A. 9).

The present case does not involve a mere failure to protest against the intrusion of officers into the defendant's home. Cf. *Nueslein* v. *United States*, 115 F. (2d) 690 (App. D. C.). Nor, in view of the evidence and the findings below, does it involve consent given as the result of fear, cf. *Amos* v. *United States*, 255 U. S. 313, or consent given by an agent. *Ibid.* The fact that the consent was given to arresting officers does not render it involuntary. *DeLapp* v. *United States, supra; Cantrell* v. *United States, supra.* Thus the sole question with respect to the evidence obtained through the search, as the court below recognized, is that of the applicability of the *McNabb* decision to the circumstances of the

present case,[18] On that question, for the reasons heretofore given, we believe that the decision below is erroneous.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgments of the court of appeals should be reversed and those of the district court affirmed.

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MARCH 1944.

[18] It is unnecessary, in view of the fact of consent, to consider whether a search for stolen property is governed by standards different from those relating to a general search for incriminating evidence. In *United States* v. *Lefkowitz*, 285 U. S. 452, 465–466, this Court said: "The decisions of this court distinguish searches of one's house, office, papers or effects merely to get evidence to convict him of crime, from searches such as those made to find stolen goods for return to the owner, to take property that has been forfeited to the Government, to discover property concealed to avoid payment of duties for which it is liable, and from searches such as those made for the seizure of counterfeit coins, burglars' tools, gambling paraphernalia, and illicit liquor in order to prevent the commission of crime. *Boyd* v. *United States*, 116 U. S. 616, *et seq.* *Weeks* v. *United States*, 232 U. S. 383, 395. *Gouled* v. *United States*, *supra*, 306. *Carroll* v. *United States*, *supra*." Compare D. C. Code, Title 4, Section 141.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 514

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

JAMES P. MITCHELL.

No. 515

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

JAMES P. MITCHELL.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

JAMES J. LAUGHLIN,
Counsel for Respondent.

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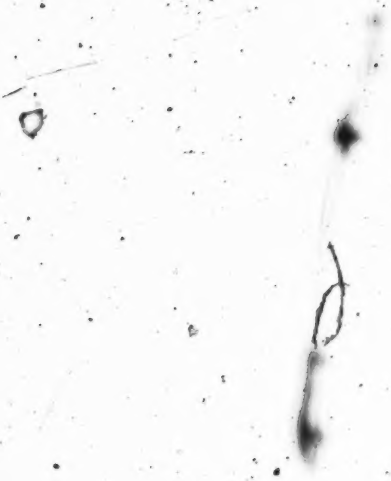

IN THE

SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA,
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vs.

JAMES P. MITCHELL.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

Opinion Below.

The opinion of the United States Court of Appeals for the District of Columbia does not yet appear in the Federal Reporter nor in the Court of Appeals reports. It is, however, reported in volume 71, No. 50, Washington Law Reporter, pages 1274 and 1275.

Jurisdiction.

The judgments of the United States Court of Appeals for the District of Columbia were entered on October 25,

1943. No petition for rehearing was filed. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by Acts of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

Questions Presented.

1. Whether the rule of *McNabb* v. *United States*, 318 U. S. 332, makes inadmissible in evidence any confessions, verbal or oral, exacted from an accused while he was illegally confined.

2. When it is shown that the arresting officers have disregarded existing law and held an accused in a police precinct without taking him before a committing magistrate, can the courts of the United States at a criminal trial condone such law violations by receiving in evidence confessions or statements exacted from an accused under such circumstances.

3. When the rights of an accused are violated in that the arresting officers have disregarded existing law and seized property without a warrant against the will of the accused, can the Courts of the United States permit such property to be received in evidence at a criminal trial.

Statement.

Two indictments were returned in District Court and there was a verdict of guilty in each indictment in separate jury trials. By agreement of all parties the cases were consolidated in the United States Court of Appeals.

The respondent was sentenced in one case from one to three years and in the other case from one-and-a-half to four-and-a-half years, to run concurrently with each other. On appeal to the United States Court of Appeals for the District of Columbia the judgments of conviction were reversed. The opinion of the Court of Appeals rested upon

this Court's decision in *McNabb v. United States*, 318 U. S. 332.

Inasmuch as the statement in the petition is inaccurate and incomplete it is necessary to add to such statement.

Respondent at all times has denied his guilt. At his first criminal trial a motion to suppress evidence was filed and testimony was taken. In support of his motion, respondent took the stand and testified that he was arrested on October 12, 1942 and confined at police precinct No. 8 without an attorney and without a charge having been placed against him and that he was not taken before a committing magistrate until October 20, 1942 (R. 18). He further testified that he at no time authorized the police to enter his home and to take anything therefrom, and at no time consented to the police officers so doing, and no one gave any police officer such permission on his behalf. The property which the respondent wanted returned, he testified, was of the character set forth in his affidavit. Respondent further testified that he was brutally beaten by the police while in custody and a number of wounds and bruises were inflicted on his body and a tooth was knocked out. On cross-examination, the respondent testified that the property which he wanted returned included certain jewelry which belonged to his aunt and uncle.

The officers testified that the respondent gave them permission to enter his home. The motion to suppress was denied and an exception was duly noted.

At the trial respondent testified that he owned a rooming house at 1427 N Street, N. W. in the District of Columbia, which he operated, and that in the early afternoon of October 12th, 1942, an officer came to his house and stated that he was looking for a colored man named Mitchell (R. 3), and that after a few minutes the officer departed. Respondent further testified that the same evening another officer came to his home and asked him to come to a car which was

parked a short distance away. Respondent said when he got to the car with the officer he was forced to enter the car, where the other officer was seated at the wheel. The respondent asked both officers: "What is this all about?" and the officers replied: "You will soon find out." Respondent stated that he had at all times denied any participation in the housebreaking and larceny. He testified that he was beaten in the car and from time to time in the police precinct, and that on one occasion a tooth was knocked from his mouth. He testified that he was not taken to a committing magistrate until October 20, 1942 (R. 36). He testified again that he at no time authorized the police officers to visit his home. He also testified that his name was carried in the telephone directory for a considerable period of time under the name of James P. Mitchell, with an address at 1427 N Street, N. W. There was also testimony offered at the trial by a witness, Barbara Jenkins (R. 37) to the effect that she visited respondent at the police precinct some four or five days after October 12th and noticed marks and bruises about his body. His mother testified that she visited the police precinct while respondent was confined and that she observed bruises and marks on his body, and that on at least one occasion she observed him spitting blood (R-25). The mother testified that the respondent complained to her that he had been kicked in the stomach and that he had suffered severe injury (R-37). Another witness, Cosmo Testa, testified that he saw the respondent at the police precinct on the night of October 12th, 1942, where he observed certain marks and bruises on respondent's body and about his face. He further testified that the respondent's face was greatly swollen and his skin discolored, (R-37).

Argument—One and Two.

Respondent says that the opinion of the Court of Appeals is a correct statement of the law and is logical and adequate

and that the reasoning announced therein is logical and adequate and should not be departed from.

The record leaves no room for doubt that respondent was arrested on October 12th at about six or seven o'clock in the evening. That was a Monday. He could have easily been brought before a committing magistrate the following morning, Tuesday, October 13th. In the District of Columbia there is absolutely no excuse for a violation and a disregard of the mandatory provisions of the District Code. Section 140, Title 14, D. C. Code (1940 Edition) provides:

> "The several members of the police force shall have power and authority to immediately arrest, without warrant, and to take into custody any person who shall commit, or threaten or attempt to commit, in the presence of such member, or within his view, any breach of the peace or offense directly prohibited by Act of Congress, or by any law or ordinance in force in the District, *but such member of the police force shall immediately, and without delay, upon such arrest, convey in person such offender before the proper court*, that he may be dealt with according to law." (italics ours)

In the District of Columbia the United States Branch of Police Court is in session from 10:00 a. m. to 4:00 p. m. The United States Commissioner is available from 9:00 a. m. until 6 or 7:00 p. m.

Then considering further the circumstances insofar as respondent is concerned, there was no justification for not taking him before a committing magistrate on Tuesday, October 13th—certainly none for not taking him on Wednesday, October 14th—certainly none for refusing to take him on Thursday, October 15th—certainly no excuse for not taking him on Friday, October 16th—certainly none for not taking him on Saturday, October 17th, and *surely none* for not taking him on Monday, October 19th. Yet in spite of the mandatory provisions of the D. C. Code above set forth,

the provisions of which are known to all police officers, he was, in violation of his constitutional rights and in utter and reckless disregard of the law held in solitary confinement at a police precinct until October 20th. The record leaves no room for doubt that he was denied assistance of counsel and he had no one to advise him and no one to whom he could appeal for advice.

The contention is made that immediately upon respondent's arrest he made an oral confession and freely and voluntarily admitted his guilt, and was according to the police officers in a cooperative frame of mind—in fact, in an exultant mood. If the officers' story is true and the respondent was so anxious to cooperate with them and was so free and voluntary in admitting his guilt, then we may ask ourselves these questions:

1—Since he was cooperating with the police and wanted to please the police, then why did not the police obtain the confession in writing?

2—If then the respondent was so anxious to cooperate, then why did not the police officers obey the law and take him before a committing magistrate the following day?

Truthful response to these questions present obstacles well nigh insurmountable.

The respondent has maintained consistently that the statement of the police as to respondent's immediate confession upon apprehension and the officers' statement as to his willingness and readiness to cooperate with them was a story concocted and designed and devised by the police officers to evade and circumvent the ruling of this Court in the case of *McNabb* v. *United States*. It must never be forgotten that at the time respondent was arrested, the *McNabb* opinion had not yet been announced. At the time of respondent's criminal trial the *McNabb* opinion had become the law of the land. Therefore, respondent has consistently

maintained and now maintains that the circumstances of the detention of respondent in the police precinct clearly showed such a violation of respondent's constitutional and legal rights as to constitute defiance of *McNabb* v. *United States*. Therefore, if they could concoct and invent and devise a story that would relate that the accused immediately upon arrest freely and voluntarily confessed his guilt, that a later detention by the police officers of an accused would permit them to escape the castigation meted out by this Court in *McNabb* v. *United States*.

It is most unfortunate that the record does not truly reflect all the circumstances of respondent's illegal detention. Respondent was beaten by the police and held in absolute disregard of his constitutional rights and denied assistance of counsel and not accorded the provisions of the mandate of Congress requiring immediate arraignment, and then after five or six days of torture and abuse *he was forced to sign a written confession against his will*, and it was not until after the police officers had extracted and tortured from him such a confession that the police officers took him before a committing magistrate.

True it is that this confession signed by the respondent after many days of torture, abuse and cruelty did not find its way into the record, yet it can never be disputed or denied that such a confession—obtained in the face of the violation of constitutional rights—was extracted from respondent and now reposes in the files of the office of the United States Attorney for the District of Columbia.

The United States Court of Appeals for the District of Columbia found no difficulty in the solution of the problems here presented. We find this in the opinion:

> "This grows out of the fact that after appellant was arrested and brought from his home to the police station and interrogated by the officers, the confession obtained and his consent to the search given, he was

> continued under arrest for more than a week by the police without being brought before a magistrate, commissioner or court, and this in the very teeth of the statute which commands arraignment 'immediately and without delay.' It was almost this identical situation which, the Supreme Court in McNabb vs. United States, makes a confession, voluntary or involuntary, inadmissible in evidence on the trial of the case."

And the Court of Appeals in considering the applicability of the McNabb ruling said this:

> "The principle of the decision was that since the Congressional requirement that police officers take an accused person before a judicial officer for commitment with reasonable promptness was designed to avoid 'all the evil implications of secret interrogations of persons accused of crime,' and to check 'resort to those reprehensible practices known as the 'Third Degree,' the violation of the statute in 'flagrant disregard of the procedure which Congress has commanded,' was sufficient to require the exclusion of all evidence so obtained from the accused."

And then the Court of Appeals quoted from the Supreme Court decision in *McNabb* v. *United States:*

> "• • • The record leaves no room for doubt that the questioning of petitioners took place while they were in the custody of the arresting officers and before any order of commitment was made. Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of the law."

There is no doubt that the ruling of this Court in *McNabb* v. *United States* is determinative of the questions presented here. It seems most significant that in the preliminary draft of the Federal Rules of Criminal Procedure

now in the making, has this pertinent and significant requirement:

> "Rule 5. Procedure upon Arrest.
>
> (a) Appearance Before the Commissioner. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall without unnecessary delay take the person arrested before the nearest available commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States. If the arrest is made without a warrant the person making the arrest or any other person having knowledge of the facts shall forthwith make and file with the commissioner or other officer a complaint against the person arrested."

And then to dispose of the contention here, Rule 5(b) provides this:

> "(b) Exclusion of Statement Secured in Violation of Rule. No statement made by a defendant in response to interrogation by an officer or agent of the government shall be admissible in evidence against him if the interrogation occurs while the defendant is held in custody in violation of this rule."

The constitutional questions involved here are important and serious. In Scotland the interrogation of arrested persons by the police is forbidden and confessions and admissions obtained in this way are inadmissible in evidence. In England, Judges have formulated and approved rules regulating the questioning by police of a person in custody. We have no such protection in this country. The accused person is simply at the mercy of the arresting officer. Experience teaches that all of the abuses that have arisen from the unlawful detention of prisoners comes as a result of the failure of the arresting officers to obey the law. Most of the states have provisions for speedy arraignment. The

United States Code, Section 595, Title 18, requires that an accused shall be taken before a committing magistrate but the statute does not specify a certain period of time. However, Section 593, Title 18, provides that in arrest for certain types of offenses that the arresting officers take the man forthwith before a committing magistrate. No such uncertainty prevails in the District of Columbia. The language of the statute is clear. Any Judge in the District of Columbia—and there are several dozen in number—can be regarded as a committing magistrate.

Much has been said and published in years past with regard to police brutality. It has been contended since time immemorial unless the temptation is removed from the police officers—that is, under the compulsion of speedy arraignment—no headway will be made in curbing this relic of barbarism. If the criminal files of our local courts are analyzed and studied with a view to compiling statistics showing the number of criminal prosecutions against police officers for brutality to prisoners, it will invariably be seen that these brutal practices would not have been inflicted upon the prisoners had the police officers been required to take the accused immediately before a committing magistrate. When the police officers are permitted to lodge an accused in a police precinct and then forget all about the requirements of the law and shunt him from precinct to precinct and line-up to line-up, hoping that something unfavorable will turn up, the evils that result are easy to discern.

The McNabb opinion is a real challenge to honest and efficient police administration. It will cause the police officers to be alert and vigilant. It may well be that in some few isolated instances that the police may be somewhat hampered in their investigating work. Even though an occasional injustice may result, that is a small price

to pay for honest adherence to the law and to assure integrity in government.

Point Three.

We contend that the ruling of the United States Court of Appeals as to the refusal to receive in evidence property seized in violation of an accused's constitutional rights is sound indeed. If the police falsified as to the making of the oral confession by the respondent in this case, then it is safe to assume that they also falsified as to the consent given to search his home without a warrant. The trial judge erroneously refused to suppress the evidence on the strength of the officers' statement that respondent consented to the unlawful search. That was vigorously denied at all times by the respondent. It cannot be doubted that even if the consent was given, it was given while respondent was in custody and was given during the period he was deprived of the assistance of counsel. We say if there is any doubt on this point, we urge that the provisions of the Sixth Amendment guaranteeing to the accused the assistance of counsel has application here. While it is true the cases have so far construed this guarantee to cover the period only from arraignment to sentence. However, we say that a criminal prosecution begins at the moment of the arrest of the accused. If that is so, then he is entitled to the protection of the constitution from the moment of his arrest. If that is so, then the consent given—even if it was given—under the circumstances of this case—is in violation of the constitution. As to the constitutional guarantees, let us refer to the case of *Olmstead* v. *United States*, 277 U. S. 438 and with particular reference to the dissenting opinions of Justice Holmes and Justice Brandeis. It is comforting to know that Justice Brandeis lived to see his dis-

senting views become the law of the land. In *Nardone* v. *United States*, 302 U. S. 379, Justice Brandeis said this:

> "The Government makes no attempt to defend the methods employed by its officers. Indeed, it concedes that if wire-tapping can be deemed a search and seizure within the Fourth Amendment such wire-tapping as was practiced in the case at bar was an unreasonable search and seizure and that the evidence thus obtained was inadmissible."

Justice Brandeis said further in the same case:

> "Decisions of this Court applying the principle of the Boyd case (116 United States 616) have settled these things. Unjustified search and seizure violates the Fourth Amendment, whatever the character of the paper; whether the paper when taken by the federal officers was in the home, in an office or elsewhere, whether the taking was effected by force, by fraud, or in the orderly process of a court's procedure. From these decisions, it follows necessarily that the Amendment is violated by the officer's reading the paper without a physical seizure, without his even touching it; and that use, in any criminal proceedings, of the contents of the paper so examined—as where they are testified to by a federal officer who thus saw the document or where, through knowledge so obtained, a copy has been procured elsewhere—any such use constitutes a violation of the Fifth Amendment."
>
> "The protection guaranteed by the Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the

right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence, in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth."

"* * * And it is also immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on guard to protect liberty when the Government's purposes are beneficient. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding" * * * "decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be in peril if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justified the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

Justice Holmes in the same case said this in dissent:

"We have to choose and for my part I think it a less evil that some criminals should escape than that the Government should take an ignoble part."

In *Chambers* v. *Florida*, 309 U. S. 227, this Court said:

"* * * under our constitutional system courts stand against any winds that blow as havens of refuge

for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement * * * no higher duty, no more solemn responsibility, rests upon this Court than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our constitution of whatever race, creed or persuasion."

Conclusion.

The opinion of the Court of Appeals is adequate and ample, and should not be disturbed. There is no sound reason for the granting of the petition for writs of certiorari in this case. We do not have a situation where a state court has decided a federal question of substance not theretofore determined by this Court. We do not have a case where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter. Nor do we have a case wherein the United States Court of Appeals for the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or application of the Constitution, or a treaty or statute of the United States, which has not been, but should be, settled by this Court, or where the United States Court of Appeals for the District of Columbia has not given proper effect to an applicable decision of this Court. We say that the Court of Appeals adopted the only course it could take. The Court of Appeals followed the reasoning of this Court in the McNabb opinion and the judgment of that Court should not be disturbed.

The opinion of this Court in the case of *McNabb* v. *United States* was the greatest stroke for human liberty since Lord Cornwallis surrendered at Yorktown in 1783. True it is there has been some criticism from some easy-going,

slow motion arresting officers who have for the first time been stirred from their lethargy by the requirements of the McNabb opinion. When all of the hue and cry subsides it will be found that strict adherence to the requirements of the McNabb opinion as to speedy arraignment will make for honest law enforcement and will create new respect for law. After all, no one can ever complain when strict observance of the law is exacted from the arresting officers. No man in this Court—from the highest to the lowest is above the law. All should be required to obey it. We say, therefore, that there is nothing in the petition that calls for the granting of writs of certiorari and we say, therefore, that the petitions should be denied and the judgments of the United States Court of Appeals for the District of Columbia left in full force and effect.

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SUPREME COURT OF THE UNITED STATES.

Nos. 514-515.—October Term, 1943.

The United States of America, Petitioner, vs. James P. Mitchell.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[April 24, 1944.]

Mr. Justice Frankfurter delivered the opinion of the Court.

Under each of two indictments for housebreaking and larceny, the defendant Mitchell was separately tried and convicted, but his convictions were reversed by the Court of Appeals, 138 F. 2d 426, solely on the ground that the admission of testimony of Mitchell's oral confessions and of stolen property secured from his home through his consent was barred by our decision in *McNabb* v. *United States*, 318 U. S. 332. In view of the importance to federal criminal justice of proper application of the *McNabb* doctrine, we brought the case here. 321 U. S. —.

Practically the whole body of the law of evidence governing criminal trials in the federal courts has been judge-made. See *United States* v. *Reid*, 12 How. 361, and *Funk* v. *United States*, 290 U. S. 371. Naturally these evidentiary rules have not remained unchanged. They have adapted themselves to progressive notions of relevance in the pursuit of truth through adversary litigation, and have reflected dominant conceptions of standards appropriate for the effective and civilized administration of law. As this Court when making a new departure in this field took occasion to say a decade ago, "The public policy of one generation may not, under changed conditions, be the public policy of another." *Funk* v. *United States*, *supra* at 381. The *McNabb* decision was merely another expression of this historic tradition, whereby rules of evidence for criminal trials in the federal courts are made a part of living law and not treated as a mere collection of wooden rules in a game.

That case respected the policy underlying enactments of Congress as well as that of a massive body of state legislation which, whatever may be the minor variations of language, require that

arresting officers shall with reasonable promptness bring arrested persons before a committing authority. Such legislation, we said in the *McNabb* case, "constitutes an important safeguard—not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime. It reflects not a sentimental but a sturdy view of law enforcement. It outlaws easy but self-defeating ways in which brutality is substituted for brains as an instrument of crime detection. A statute carrying such purposes is expressive of a general legislative policy to which courts should not be heedless when appropriate situations call for its application." 318 U. S. at 344.

In the circumstances of the *McNabb* case we found such an appropriate situation, in that the defendants were illegally detained under aggravating circumstances: one of them was subjected to unremitting questioning by half a dozen police officers for five or six hours and the other two for two days. We held that "a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law. Congress has not explicitly forbidden the use of evidence so procured. But to permit such evidence to be made the basis of a conviction in the federal courts would stultify the policy which Congress has enacted into law." 318 U. S. at 345. For like reasons it was held in the *Nardone* case that where wiretapping is prohibited by Congress the fruits of illegal wiretapping constitute illicit evidence and are therefore inadmissible. *Nardone* v. *United States*, 302 U. S. 379; 308 U. S. 338. Inexcusable detention for the purpose of illegally extracting evidence from an accused, and the successful extraction of such inculpatory statements by continuous questioning for many hours under psychological pressure, were the decisive features in the *McNabb* case which led us to rule that a conviction on such evidence could not stand.

We are dealing with the admissibility of evidence in criminal trials in the federal courts. Review by this Court of state con-

victions presents a very different situation, confined as it is within very narrow limits. Our sole authority is to ascertain whether that which a state court permitted violated the basic safeguards of the Fourteenth Amendment. Therefore, in cases coming from the state courts in matters of this sort, we are concerned solely with determining whether a confession is the result of torture, physical or psychological, and not the offspring of reasoned choice. How difficult and often elusive an inquiry this implies, our decisions make manifest. And for the important relation between illegal incommunicado detention and "third-degree" practices, see IV, Report, National Commission on Law Observance and Enforcement (better known as the Wickersham Commission) (1931) pp. 4, 35 *et seq.*, 152; and the debates in the House of Commons on the Savidge case, 217 H. C. Deb. (5th ser. 1928) pp. 1216-1220, 1303-1339, 1921-1931, and Inquiry in Regard to the Interrogation by the Police of Miss Savidge, Cmd. 3147 (1928); Report of the Royal Commission on Police Powers and Procedure, Cmd. 3297 (1929). But under the duty of formulating rules of evidence for federal prosecutions, we are not confined to the constitutional question of ascertaining when a confession comes of a free choice and when it is extorted by force, however subtly applied. See *United States* v. *Oppenheimer*, 242 U. S. 85, 88. The *McNabb* decision was an exercise of our duty to formulate policy appropriate for criminal trials in the federal courts. We adhere to that decision and to the views on which it was based. (For cases in which applications of the *McNabb* doctrine by circuit courts of appeals were left unchallenged by the Government, see *United States* v. *Haupt*, 136 F. 2d 661; *Gros* v. *United States*, 136 F. 2d 878; *Runnels* v. *United States*, 138 F. 2d 346.)

But the foundations for application of the *McNabb* doctrine are here totally lacking. Unlike the situation in other countries, see, for instance, §§ 25 and 26 of the Indian Evidence Act, 1872,[1] under the prevailing American criminal procedure, as was pointed out in the *McNabb* case, "The mere fact that a confession was made while in the custody of the police does not render it inadmissible." 318 U. S. at 346. Under the circumstances of this case, the

[1] § 25: "No confession made to a Police officer, shall be proved as against a person accused of any offence."

§ 26: "No confession made by any person whilst he is in the custody of a Police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."

trial courts were quite right in admitting, for the juries' judgment, the testimony relating to Mitchell's oral confessions as well as the property recovered as a result of his consent to a search of his home. As the issues come before us the facts are not in dispute and are quickly told.

In August and early October 1942, two houses in the District of Columbia were broken into and from each property was stolen. The trail of police investigation led to Mitchell who was taken into custody at his home at 7 o'clock in the evening on Monday, October 12, 1942, and driven by two police officers to the precinct station. Within a few minutes of his arrival at the police station, Mitchell admitted guilt, told the officers of various items of stolen property to be found in his home and consented to their going to his home to recover the property.[2] It is these decisions and that property which supported the convictions, and which were deemed by the court below to have been inadmissible. Obviously the circumstances of disclosure by Mitchell are wholly different from those which brought about the disclosures by the McNabbs. Here there was no disclosure induced by illegal detention, no evidence was obtained in violation of any legal rights, but instead the consent to a search of his home, the prompt acknowledgement by an accused of his guilt, and the subsequent rueing apparently of such spontaneous cooperation and concession of guilt.

But the circumstances of legality attending the making of these oral statements are nullified, it is suggested, by what followed. For not until eight days after the statements were made was Mitchell arraigned before a committing magistrate. Undoubtedly his detention during this period was illegal. The police explanation of this illegality is that Mitchell was kept in such custody without protest through a desire to aid the police in clearing up thirty housebreakings, the booty from which was found in his home. Illegality is illegality, and officers of the law should deem themselves special guardians of the law. But in any event, the ille-

[2] In both cases Mitchell denied the testimony of the officers that he had in fact made prompt and spontaneous confession and consent to the search of his home, and on the basis of such denial motions were made to exclude the evidence. The trial judges ruled that whether these statements were in fact made in the circumstances narrated were questions of fact for the juries. As such they were left to the juries, and we here accept their verdict as did the court below. Mitchell, it must be emphasized, merely denied that he made these statements and so did not contest the time of making them. While at the trial there was a claim by Mitchell that he was abused by the police officers, in the state of the record that issue is not here.

gality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures. These, we have seen, were not elicited through illegality. Their admission, therefore, would not be use by the Government of the fruits of wrongdoing by its officers. Being relevant, they could be excluded only as a punitive measure against unrelated wrongdoing by the police. Our duty in shaping rules of evidence relates to the propriety of admitting evidence. This power is not to be used as an indirect mode of disciplining misconduct.

Judgment reversed.

Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE concur in the result.

Mr. Justice BLACK dissents.

Mr. Justice REED.

As I understand *McNabb* v. *United States*, 318 U. S. 332, as explained by the Court's opinion of today, the *McNabb* rule is that where there has been illegal detention of a prisoner, joined with other circumstances which are deemed by this Court to be contrary to proper conduct of Federal prosecutions, the confession will not be admitted. Further, this refusal of admission is required even though the detention plus the conduct do not together amount to duress or coercion. If the above understanding is correct, it is for me a desirable modification of the *McNabb* case.

However, even as explained I do not agree that the rule works a wise change in Federal procedure.

In my view detention without commitment is only one factor for consideration in reaching a conclusion as to whether or not a confession is voluntary. The juristic theory under which a confession should be admitted or barred is bottomed on the testimonial trustworthiness of the confession. If the confession is freely made without inducement or menace, it is admissible. If otherwise made, it is not, for if brought about by false promises or real threats, it has no weight as proper proof of guilt. *Wan* v. *United States*, 266 U. S. 1, 14; *Wilson* v. *United States*, 162 U. S. 613, 622; 3 Wigmore Evidence (1940 Ed.) § 882.

As the present record shows no evidence of such coercion, I concur in the result.